

# EXHIBIT 1

Peter Juni

September 21, 2010

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

ALASKA ELECTRICAL PENSION  
FUND,

Plaintiff,

V. CIVIL ACTION  
NO. 03-15-19 (AET)

PHARMACIA CORP., et al.,

Defendants.

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VIDEOTAPED DEPOSITION OF  
PETER JUNI, M.D.

September 21, 2010  
10:39 a.m.

Robbins, Geller, Rudman & Dowd, LLP  
1100 Connecticut Avenue  
Washington, D.C. 20036

Lori Goodin Mackenzie, RPR, CLR, CRR  
Case Number 2688  
Assignment Number 172652

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4 Article published The Lancet, "Are the

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| <p>1 INDEX OF EXHIBITS (Continued)</p> <p>2 Defendants'</p> <p>3 Exhibit Description Page</p> <p>4 11 Article in Arthritis &amp; Rheumatism</p> <p>5 entitled "Efficacy and Safety of</p> <p>6 Intraarticular Hylan or Hyaluronic</p> <p>7 Acids for Osteoarthritis of the Knee,</p> <p>8 a Randomized Controlled Trial" 303</p> <p>9 12 Letters published in Arthritis &amp;</p> <p>10 Rheumatism 305</p> <p>11 13 Correspondence published in</p> <p>12 The Lancet, January 1, 2005 321</p> <p>13 14 Article published in Age and Aging</p> <p>14 entitled "Older people should NOT be</p> <p>15 prescribed 'coxibs' in place of</p> <p>16 conventional NSAIDs" 345</p> <p>17 15 Abstract from The Lancet, "Celecoxib</p> <p>18 versus Omeprazole and Diclofenac in</p> <p>19 Patients with Osteoarthritis and</p> <p>20 Rheumatoid Arthritis (CONDOR)" 352</p> <p>21 (Original Exhibits included with original</p> <p>22 transcript.)</p> | <p>1 MR. LITTLEJOHN: Josh Littlejohn for</p> <p>2 the Plaintiff.</p> <p>3 MR. WEISS: Josh Weiss for the</p> <p>4 defendant.</p> <p>5 THE VIDEOGRAPHER: Would the court</p> <p>6 reporter please swear in the witness.</p> <p>7 PETER JUNI, M.D.,</p> <p>8 having been first duly sworn, testified as</p> <p>9 follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. SAHAM:</p> <p>12 Q. Good morning, Dr. Juni.</p> <p>13 A. Good morning.</p> <p>14 Q. And where do you reside?</p> <p>15 A. I am residing in Bern, Switzerland.</p> <p>16 Q. Okay. And what do you do in Bern,</p> <p>17 Switzerland?</p> <p>18 A. I'm heading the Division of Clinical</p> <p>19 Epidemiology and Biostatistics at the Institute</p> <p>20 of Social and Preventive Medicine at the local</p> <p>21 university. And I'm the director of the clinical</p> <p>22 trials at the University Hospital in Bern.</p>                                                                 |

Peter Juni

September 21, 2010

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| <p>1 Q. And what is your educational<br/>2 background?<br/>3 A. I'm a physician, graduated in<br/>4 medicine and then I had an education in internal<br/>5 medicine and rheumatology and went on in clinical<br/>6 epidemiology where I did my Venia Docendi, that's<br/>7 the right to teach --<br/>8 Q. If you can speak a little slower for<br/>9 the court reporter.<br/>10 A. Okay. It's a difficult term, it's<br/>11 called a right to teach. It's like an associate<br/>12 professorship in clinical epidemiology.<br/>13 It's called Venia Docendi, which is<br/>14 V-E-N-I-A, second word, D-O-C-E-N-D-I. It's<br/>15 Latin, sorry about that, that's confusing and<br/>16 European.<br/>17 Q. And rheumatology in layman's terms,<br/>18 what is that?<br/>19 A. Rheumatology is the specialty about<br/>20 musculoskeletal health, so affecting problems<br/>21 affecting the bones and joints and muscles.<br/>22 Q. And you're currently on faculty at</p> | 9  | <p>1 vitae?<br/>2 A. Yes, it is.<br/>3 Q. And does it discuss, at least in<br/>4 general, your research and grant funding history?<br/>5 A. Yes, it does.<br/>6 Q. And do you have a particular area of<br/>7 research you've concentrated in as a professor of<br/>8 medicine?<br/>9 A. Yes. Two areas. One is<br/>10 cardiovascular health so surrounding coronary<br/>11 artery disease.<br/>12 And the other one is musculoskeletal<br/>13 health, as we've just specified, surrounding<br/>14 osteoarthritis mainly and to a certain extent<br/>15 also back pain.<br/>16 Q. And have you published a number of<br/>17 peer-reviewed articles in those areas?<br/>18 A. Yes, I did.<br/>19 Q. And approximately do you recall how<br/>20 many articles you have published?<br/>21 A. In these areas or overall?<br/>22 Q. Well, let's start with overall?</p>                                                                                                                                                            | 11 |
| <p>1 the University of Bern; is that correct?<br/>2 A. Yes. I've got a tenured position<br/>3 currently as the head of division and associate<br/>4 professor and I'm a designated full professor<br/>5 from the 1st of November onwards, tenured.<br/>6 Q. And how long have you been a<br/>7 professor at the University of Bern?<br/>8 A. I can't remember how much is this.<br/>9 I will be one year and something that I have been<br/>10 a professor there. And I've been with University<br/>11 of Bern from 2002 onwards.<br/>12 (Exhibit Number 160<br/>13 marked for identification.)<br/>14 BY MR. SAHAM:<br/>15 Q. And I would like to show you what<br/>16 I'm marking as Plaintiff's Exhibit 160. Could<br/>17 you please take a look at that document?<br/>18 A. Yes.<br/>19 Q. And do you recognize what I have<br/>20 marked as Plaintiff's Exhibit 160?<br/>21 A. That is my curriculum vitae.<br/>22 Q. And is this a current curriculum</p>          | 10 | <p>1 A. Well, approximately overall original<br/>2 articles it will be around 70 now plus several<br/>3 editorials, commentaries, lectures, so overall<br/>4 the number of articles I have published will be<br/>5 approximately 180.<br/>6 Q. Okay. And do some number of those,<br/>7 and you don't need to recall the exact number,<br/>8 deal with issues of rheumatology?<br/>9 A. Yes. There will be at least --<br/>10 well, I'd estimate 25 or so, 30 articles relating<br/>11 directly to rheumatology, yes.<br/>12 Q. And does your curriculum vitae also<br/>13 summarize your peer-reviewed grant history?<br/>14 A. Yes, it does.<br/>15 Q. And in layman's terms, what's a peer<br/>16 reviewed grant?<br/>17 A. That's a research contribution<br/>18 coming from not-for-profit institutions,<br/>19 typically foundations or governmental agencies.<br/>20 And the research grant is actually<br/>21 provided based on a thorough review of the<br/>22 research plan you are submitting in a competitive</p> | 12 |

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| <p>1 manner.</p> <p>2 Q. And does your curriculum vitae also</p> <p>3 summarize your teaching experience?</p> <p>4 A. Yes, I think so. Yes, it does.</p> <p>5 Q. And do you have a full-time teaching</p> <p>6 position as part of your duties as a professor of</p> <p>7 medicine?</p> <p>8 A. Indeed so, yes.</p> <p>9 Q. And do you teach medical students?</p> <p>10 A. I teach medical students. I teach</p> <p>11 students of biomedical sciences. I do a lot of</p> <p>12 postgraduate teaching in master's courses, in</p> <p>13 several master's courses and director of</p> <p>14 postgraduate teaching for clinical colleagues.</p> <p>15 Q. And do you do teaching in the area</p> <p>16 of clinical design and trials?</p> <p>17 A. I do mainly regular teaching in this</p> <p>18 area, clinical epidemiology. This is mainly</p> <p>19 related to problems in randomized controlled</p> <p>20 trials and other clinical studies to systematic</p> <p>21 errors, how they could occur, why they could</p> <p>22 occur to a research fraud.</p> | <p>15</p> <p>1 Q. Okay. And I would like to show you</p> <p>2 what has been previously marked in this case as</p> <p>3 Plaintiff's Exhibit 32.</p> <p>4 Could you please take a look at</p> <p>5 Plaintiff's Exhibit 32.</p> <p>6 A. Yes. This is an editorial we</p> <p>7 published in the June 1st Edition of 2002 in the</p> <p>8 British Medical Journal.</p> <p>9 Q. And it's entitled "Are Selective</p> <p>10 COX 2 Inhibitors Superior to Traditional</p> <p>11 Nonsteroidal Antiinflammatory Drugs, Adequate</p> <p>12 Analysis of the CLASS Trial Indicates that this</p> <p>13 may not be the Case."</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And what were the</p> <p>16 circumstances that led you to submit this</p> <p>17 editorial to the British Medical Journal?</p> <p>18 A. At the time, when I came back from a</p> <p>19 research fellowship in the United Kingdom, which</p> <p>20 was purely academic, not a clinical setting, I</p> <p>21 was surprised to find a lot of enthusiasm for a</p> <p>22 novel class of drugs called COX 2 Selective</p>                                                                                                       |
| <p>14</p> <p>1 And then if it comes to a specific</p> <p>2 clinical topic, it's mainly again about</p> <p>3 musculoskeletal health, rheumatology and</p> <p>4 cardiovascular health, cardiology.</p> <p>5 Q. And approximately how many articles</p> <p>6 have you published in the area of clinical</p> <p>7 epidemiology?</p> <p>8 A. It depends on how you calculate and</p> <p>9 assign this actually, but I'd say about 50.</p> <p>10 Q. And you regularly lecture in this</p> <p>11 area?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And have you ever received any</p> <p>14 honors or awards in your medical or research</p> <p>15 career?</p> <p>16 A. Yes. Well, I've been awarded at</p> <p>17 several scientific conferences for best</p> <p>18 contributions or runner-up contributions</p> <p>19 including twice awards from the Cochrane</p> <p>20 Collaboration, which is an international</p> <p>21 organization dedicated to summarize the effects</p> <p>22 of health care intervention.</p>                                                    | <p>16</p> <p>1 Inhibitors in Switzerland.</p> <p>2 And just out of pure academic</p> <p>3 research just went into the literature a bit and</p> <p>4 quite quickly became aware of an article in The</p> <p>5 Washington Post in August 2001, and the two</p> <p>6 lectures published in JAMA, that's the Journal of</p> <p>7 the American Medical Association, in</p> <p>8 November 2001, indicating that the pivotal trial</p> <p>9 of one of the available COX 2 Selective</p> <p>10 Inhibitors, celecoxib, may actually have been</p> <p>11 reported in a misleading manner in the major</p> <p>12 publication.</p> <p>13 And I was surprised to find that at</p> <p>14 that time and when probably a few weeks later I</p> <p>15 was invited to give a workshop about the</p> <p>16 treatment of osteoarthritis to clinical</p> <p>17 colleagues in Switzerland, and when I was</p> <p>18 bringing this topic up and showed a comparison of</p> <p>19 what was published with what was available at</p> <p>20 that time at -- publicly available at the Food</p> <p>21 and Drug Administration, the U.S. Food and Drug</p> <p>22 Administration's website at the time, and</p> |

Peter Juni

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| <p>17</p> <p>1 actually what was available at the FDA's website<br/>2 did not exactly compare with what was published<br/>3 in JAMA.<br/>4 I was surprised that nobody actually<br/>5 was aware of this problem. And this made me then<br/>6 suggest to my colleague, Paul Dieppe, who was at<br/>7 that time a professor of rheumatology at the<br/>8 University of Bristol, and Anne Rutjes, who was a<br/>9 research fellow and working in Amsterdam, that we<br/>10 should actually write this up just to make our<br/>11 clinical colleagues aware of the issues related<br/>12 to this publication.<br/>13 Q. And you basically had made some<br/>14 comparisons between documents that were posted on<br/>15 the FDA website and the Journal of American<br/>16 Medical Association article from September<br/>17 of 2000 which purported to report the results of<br/>18 the CLASS Studies; is that correct?<br/>19 MR. WEISS: Object to the form of<br/>20 the question.<br/>21 BY MR. SAHAM:<br/>22 Q. He can make objections and you can</p>                       | <p>19</p> <p>1 the third paragraph on the front page, you noted<br/>2 that "Complete information available to the<br/>3 United States Food and Drug Administration<br/>4 contradicted these conclusions."<br/>5 And when you're talking about these<br/>6 conclusions, were you referring to conclusions<br/>7 published in the Journal of American Medical<br/>8 Association?<br/>9 MR. WEISS: Object to the form of<br/>10 the question.<br/>11 THE WITNESS: Correct. I was<br/>12 referring to the conclusions S, for example,<br/>13 stipulated in the abstract of the article<br/>14 published in the Journal of the American Medical<br/>15 Association by Silverstein and colleagues.<br/>16 Shall I read the conclusions that I<br/>17 was referring to?<br/>18 BY MR. SAHAM:<br/>19 Q. Sure.<br/>20 A. In this study, meaning the CLASS<br/>21 study, celecoxib, at dosages greater than those<br/>22 indicated clinically was associated with the low</p>                                                                    |
| <p>18</p> <p>1 still answer the question.<br/>2 A. Okay. Good. So, yes, it was<br/>3 basically a comparison with it, between the paper<br/>4 published in JAMA in 2000, I wouldn't know the<br/>5 exact month of it, so but the paper by<br/>6 Silverstein and colleagues published in JAMA<br/>7 2000, Volume 284, pages 1247 through 55 with the<br/>8 medical reviewers' and statistical reviewers'<br/>9 report as published on the FDA's website.<br/>10 Q. And I want to show you what's<br/>11 previously been marked in this case as Wolfe<br/>12 Exhibit 3, could you please take a look at this<br/>13 document.<br/>14 A. Exhibit 3 is exactly the article I<br/>15 was referring to by Silverstein and colleagues.<br/>16 This is the main report of the pivotal CLASS<br/>17 Study in the Journal of the American Medical<br/>18 Association, published December 13th, 2000 as I<br/>19 have just noted.<br/>20 Q. And turning your attention back to<br/>21 Exhibit 32, your British Medical Journal<br/>22 editorial, you noted that -- and I'm looking at</p> | <p>20</p> <p>1 residence of symptomatic ulcers and ulcer<br/>2 complications combined, as well as other<br/>3 clinically important toxic effects compared with<br/>4 NSAIDs, at standard dosages.<br/>5 Q. And what were the specific<br/>6 contradictions you noted in your comparison?<br/>7 A. There were several. First of all,<br/>8 what was most striking is that the CLASS study as<br/>9 published was described as one single trial in<br/>10 which patients are randomly assigned to receive<br/>11 treatment celecoxib, ibuprofen or diclofenac on a<br/>12 2:1:1 basis.<br/>13 This description in the article was<br/>14 inaccurate, since the documents on the FDA<br/>15 website indicate that actually the data included<br/>16 in this report were referring to two randomized<br/>17 controlled trials.<br/>18 One trial randomized comparison of<br/>19 celecoxib with diclofenac and the other trial a<br/>20 randomized comparison of celecoxib with<br/>21 ibuprofen.<br/>22 These two trials had different</p> |

Peter Juni

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| <p>21</p> <p>1 protocols. These protocols were specified and<br/>2 submitted at different time points and basically<br/>3 were, for the purpose of the negotiations with<br/>4 the Food and Drug Administration, submitted<br/>5 together. But actually it was clear from the<br/>6 beginning that the paper should have described<br/>7 two rather than one trial. This was the first<br/>8 misleading point.<br/>9 Q. Was there anything disclosed in the<br/>10 JAMA article, which is Wolfe Exhibit 3, with<br/>11 respect to comparisons between celecoxib and<br/>12 diclofenac?<br/>13 A. You mean results that were directly<br/>14 available in the article where we could make a<br/>15 direct comparison just with diclofenac, but not<br/>16 with the combined traditional NSAIDs, the<br/>17 combined drugs, meaning ibuprofen and diclofenac<br/>18 together. That's what you're referring --<br/>19 Q. Well, let me ask you a question.<br/>20 Did you become aware that certain<br/>21 comparisons were made between celecoxib and<br/>22 diclofenac as a part of the clinical trial?</p> | <p>23</p> <p>1 and diclofenac show any advantage for celecoxib?<br/>2 A. The evaluation of celecoxib versus<br/>3 diclofenac did not show any advantage of<br/>4 celecoxib on the primary outcome of the study.<br/>5 Q. And were there, in fact, two primary<br/>6 outcomes of the study?<br/>7 MR. WEISS: Object to the form of<br/>8 the question.<br/>9 BY MR. SAHAM:<br/>10 Q. I'll ask that differently.<br/>11 Were there two primary end points<br/>12 set out in the protocol to be looked at with<br/>13 respect to each of the comparator drugs?<br/>14 MR. WEISS: Object to the form of<br/>15 the question.<br/>16 THE WITNESS: My statement will<br/>17 refer to the description of the protocol as was<br/>18 available in the reports in the statistical and<br/>19 medical reports at the FDA's website.<br/>20 According to these reports, there<br/>21 was one single primary outcome but with two<br/>22 different definitions.</p>                                                                                                                                                             |
| <p>22</p> <p>1 MR. WEISS: Object to the form of<br/>2 the question.<br/>3 THE WITNESS: I became aware that it<br/>4 was impossible, from the report, to distinguish<br/>5 between the comparisons that I just was referring<br/>6 to celecoxib versus diclofenac and celecoxib<br/>7 versus ibuprofen.<br/>8 BY MR. SAHAM:<br/>9 Q. When you looked at materials on the<br/>10 FDA website, were comparisons in fact made<br/>11 between celecoxib and diclofenac as part of the<br/>12 CLASS trial?<br/>13 A. Very much so. This was prespecified<br/>14 in the protocols. Naturally had to be<br/>15 prespecified, because we had two protocols.<br/>16 Scientifically it does absolutely<br/>17 make no sense in this situation to undermine the<br/>18 randomized comparison that you're setting up and<br/>19 just do a comparison of celecoxib versus these<br/>20 combined NSAIDS that were actually evaluated in<br/>21 different randomized trials.<br/>22 Q. And did the evaluation of celecoxib</p>                                                                                            | <p>24</p> <p>1 This single primary outcome was<br/>2 called ulcer complications. This means an ulcer<br/>3 of the gastrointestinal tract that leads either<br/>4 to a perforation, so a hole in your stomach or in<br/>5 your gut that needs -- that will result in an<br/>6 operation, a severe bleeding, or an obstruction.<br/>7 Now, there was a traditional<br/>8 definition at that time well established. In<br/>9 addition, according to the material available on<br/>10 the FDA's website, there was a second definition<br/>11 that was required by the Food and Drug<br/>12 Administration which was more stringent, meaning<br/>13 the second definition had higher thresholds to<br/>14 define something as an ulcer complication,<br/>15 because it required more severe bleeding in the<br/>16 case of a bleeding event defining the ulcer<br/>17 complication.<br/>18 And this did not compare with the<br/>19 impression the reader got when he or she actually<br/>20 was reading the article by Silverstein and<br/>21 colleagues published in JAMA, <u>Exhibit 3</u>.<br/>22 BY MR. SAHAM:</p> |



Peter Juni

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| <p>25</p> <p>1 Q. And now turning back to your<br/>2 article, <u>Exhibit 32</u>, Figure 1 --<br/>3 MR. MONTGOMERY: Just to clarify the<br/>4 record, sorry to interrupt, it's Wolfe <u>Exhibit 3</u>.<br/>5 BY MR. SAHAM:<br/>6 Q. So turning back to your article,<br/>7 <u>Exhibit 32</u> --<br/>8 A. Yes.<br/>9 Q. -- and on the first page there are<br/>10 two figures that are described as Figure 1; is<br/>11 that correct?<br/>12 A. Correct.<br/>13 Q. And what are you communicating to<br/>14 the reader in the graphs that are part of<br/>15 Figure 1?<br/>16 A. The Upper Panel N refers to the main<br/>17 outcome measures in inverted comas as they were<br/>18 published in the JAMA article in <u>Exhibit 3</u>, which<br/>19 were two and hierarchically equal outcome<br/>20 measures, one ulcer complications and the other<br/>21 one ulcer complications plus symptomatic ulcers,<br/>22 meaning gastrointestinal ulcers that lead to</p>                                                                   | <p>27</p> <p>1 different from the main outcome measures as<br/>2 published in <u>Exhibit 3</u>.<br/>3 The primary end points, as defined<br/>4 in the protocols, were just the ulcer<br/>5 complications, full stop, with, as I was<br/>6 referring to, either the traditional definition<br/>7 or the more stringent alternate definition as we<br/>8 outline it in the lower panel of Figure 1 of<br/>9 <u>Exhibit 32</u>.<br/>10 BY MR. SAHAM:<br/>11 Q. So the main outcome measure<br/>12 addressed in the JAMA article is different from<br/>13 the primary outcome measures defining the CLASS<br/>14 trial?<br/>15 A. This is correct.<br/>16 MR. WEISS: Object to the form of<br/>17 the question.<br/>18 BY MR. SAHAM:<br/>19 Q. And the lower panel of Figure 1 in<br/>20 your article, <u>Exhibit 32</u>, what is that<br/>21 communicating to the reader?<br/>22 A. This is communicating to the reader</p>                                                                                                                                                                                                 |
| <p>26</p> <p>1 symptoms in patients.<br/>2 Q. And looking at the JAMA article,<br/>3 Wolfe <u>Exhibit 3</u>, the main outcome measure is<br/>4 defined in the abstract on the front page of that<br/>5 article; is that correct?<br/>6 A. Correct.<br/>7 Q. And it's defined as, quote,<br/>8 "Incidence of prospectively defined symptomatic<br/>9 upper GI ulcers and ulcer complications (bleeding<br/>10 perforation and obstruction) and other adverse<br/>11 effects during the six-month treatment period."<br/>12 A. This is correct.<br/>13 Q. And did you, in comparing that main<br/>14 outcome measure to the information available on<br/>15 the FDA website, determine whether the main<br/>16 outcome measure differed from the primary outcome<br/>17 measures described in the trial protocols?<br/>18 MR. WEISS: Object to the form of<br/>19 the question.<br/>20 THE WITNESS: Indeed, the primary<br/>21 outcome measures, as described in the protocols<br/>22 and referred to by the FDA's reviewers, were</p> | <p>28</p> <p>1 that the differences between celecoxib and the<br/>2 combined NSAIDs as published didn't have to do<br/>3 anything with the difference between celecoxib<br/>4 and the individual comparator drugs, diclofenac<br/>5 and dibuprofane as should have been analyzed and<br/>6 presented to the readers.<br/>7 So we had robust contrast benefits<br/>8 in favor of celecoxib as published and these<br/>9 ones -- for the main outcome measures and these<br/>10 ones were entirely lacking in the analysis as<br/>11 should have been performed according to the<br/>12 protocol, according to the prespecified protocol.<br/>13 Q. And in the bottom portion of<br/>14 Figure 1 with the traditional definition, what<br/>15 does that reveal to the reader?<br/>16 A. It reveals that there were -- there<br/>17 was no statistical evidence for a benefit of<br/>18 celecoxib as compared with diclofenac or<br/>19 ibuprofen with P values that by no means reached<br/>20 statistical significance.<br/>21 And that according to the more<br/>22 stringent alternate definition that was required</p> |



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| <p style="text-align: right;">29</p> <p>1 by the FDA, there was even a nonsignificant trend<br/> 2 in favor of diclofenac as compared to celecoxib.<br/> 3 Q. And does that mean in layman's terms<br/> 4 that there was no advantage from a<br/> 5 gastrointestinal -- or strike that question.<br/> 6 There was no advantage shown with<br/> 7 respect to the incidence of complicated ulcers<br/> 8 under the traditional definition?<br/> 9 MR. WEISS: Object to the form of<br/> 10 the question.<br/> 11 THE WITNESS: There was no evidence<br/> 12 to support an advantage of celecoxib over these<br/> 13 two NSAIDs, according to the traditional<br/> 14 definition or according to the alternate more<br/> 15 stringent definition regarding ulcer<br/> 16 complications, correct.<br/> 17 BY MR. SAHAM:<br/> 18 Q. And under the alternate definition,<br/> 19 which drug out of the three involved in the two<br/> 20 trials showed an advantage?<br/> 21 A. It is difficult to directly compare<br/> 22 diclofenac with ibuprofen because they were not</p> | <p style="text-align: right;">31</p> <p>1 important?<br/> 2 A. The article, Wolfe <u>Exhibit 3</u>,<br/> 3 clearly provides the impression that there is a<br/> 4 advantage of celecoxib over the two comparator<br/> 5 drugs used in the CLASS studies, which is<br/> 6 clinically relevant and will lead to a change in<br/> 7 clinical decision-making.<br/> 8 Q. And under -- and based on your<br/> 9 review of the reports available on the FDA<br/> 10 website as of February 7th, 2001, was that an<br/> 11 accurate picture of celecoxib as compared to<br/> 12 diclofenac?<br/> 13 A. No. It clearly wasn't.<br/> 14 Q. Turning back specifically to<br/> 15 <u>Exhibit 32</u>, what was the -- what was the process<br/> 16 under which you wrote this article?<br/> 17 A. This was based on several iterations<br/> 18 I described before, that the first time I looked<br/> 19 into that in more depth was when I presented the<br/> 20 data in a preliminary fashion to my colleagues<br/> 21 during this workshop in Bern.<br/> 22 And after that we decided to write</p>                                                         |
| <p style="text-align: right;">30</p> <p>1 randomly compared in the same trial.<br/> 2 The results are from two different<br/> 3 trials, but the figure shows and this also was<br/> 4 specified or stated like that in the FDA<br/> 5 reviewer's reports that there was a<br/> 6 nonsignificant advantage and statistical trend<br/> 7 towards a higher benefit of diclofenac over<br/> 8 celecoxib.<br/> 9 Q. And was that reported in the JAMA<br/> 10 article which has been marked as Wolfe <u>Exhibit 3</u>?<br/> 11 A. No.<br/> 12 Q. And did that -- was that a omission<br/> 13 in your view important -- or strike that.<br/> 14 Would that fact be important to a<br/> 15 medical doctor in analyzing the gastrointestinal<br/> 16 advantage of celecoxib compared to diclofenac?<br/> 17 MR. WEISS: Object to the form of<br/> 18 the question.<br/> 19 THE WITNESS: Without any doubt that<br/> 20 would be important.<br/> 21 BY MR. SAHAM:<br/> 22 Q. Okay. And why would it be</p>                                                                         | <p style="text-align: right;">32</p> <p>1 the editorial and then we thoroughly inspected<br/> 2 all the material available on the FDA website.<br/> 3 Q. And how long did that process take<br/> 4 to thoroughly inspect the FDA website materials?<br/> 5 A. Currently I couldn't be exactly<br/> 6 sure, but I think it must have taken at least two<br/> 7 working weeks full-time equivalent of somebody.<br/> 8 There was a lot of material we had<br/> 9 to make sure that we now consistently understood<br/> 10 was going on, had to make sure that we didn't<br/> 11 miss any detail and it was quite a lot of<br/> 12 dedicated work actually.<br/> 13 Q. And what materials, as you sit here<br/> 14 today, do you recall reviewing from the FDA<br/> 15 website?<br/> 16 A. Well, basically we reviewed<br/> 17 everything which was available on celecoxib at<br/> 18 the time. So the early -- the later reports that<br/> 19 were going on, all the correspondence, et cetera,<br/> 20 from our point of view this was so extraordinary<br/> 21 what we saw there that we really needed to be<br/> 22 sure what was going on.</p> |

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| <p>33</p> <p>1 And this only could have been made</p> <p>2 by a thorough inspection of all of the material</p> <p>3 and all of the information available and by a</p> <p>4 recalculation of all of the effects that were</p> <p>5 presented, all of the treatment effect estimates</p> <p>6 presented by the FDA.</p> <p>7 Q. And this process of analysis took</p> <p>8 you and your two colleagues approximately two</p> <p>9 working weeks?</p> <p>10 MR. WEISS: Objection.</p> <p>11 THE WITNESS: Yes. I would estimate</p> <p>12 it would be around two working weeks, indeed.</p> <p>13 BY MR. SAHAM:</p> <p>14 Q. And, if you recall, what reports or</p> <p>15 other materials specifically did you review from</p> <p>16 the FDA website?</p> <p>17 A. It's a very long time ago. So it's</p> <p>18 difficult to remember what we looked at apart</p> <p>19 from what I still keep in mind, you know, the</p> <p>20 statistical reviewer's comments and the medical</p> <p>21 reviewer's comments.</p> <p>22 There were loads of medical</p>                                                                                                                      | <p>35</p> <p>1 A. Absolutely not.</p> <p>2 Q. And what's the basis for that</p> <p>3 statement?</p> <p>4 A. It needs quite a lot of insight</p> <p>5 into, you know, clinical epidemiology and medical</p> <p>6 statistics to make sense of what is being</p> <p>7 stipulated.</p> <p>8 For instance, a description, you</p> <p>9 know, of the power calculation and the</p> <p>10 description of decision rules, when to stop these</p> <p>11 trials, et cetera, as a layman, you will not be</p> <p>12 able to understand that. Not at all.</p> <p>13 Q. And, in your opinion, were the</p> <p>14 omissions from the JAMA article that you</p> <p>15 discussed in your editorial misleading to the</p> <p>16 reader?</p> <p>17 MR. WEISS: Objection.</p> <p>18 THE WITNESS: Clearly they were</p> <p>19 misleading to the reader. We also stipulate that</p> <p>20 in the editorial, and we still underscore that</p> <p>21 this is the case. We were talking about, you</p> <p>22 know, selling two randomized trials as one.</p>                                                                                                                   |
| <p>34</p> <p>1 reviewers' comments related to the earlier phase</p> <p>2 of the development of the drug and the drug</p> <p>3 approval process, actually we reviewed all of</p> <p>4 that. There were pharmaceutical experts that had</p> <p>5 reports posted, et cetera.</p> <p>6 So there were many tables available</p> <p>7 at just, you know, relating to the CLASS Trial,</p> <p>8 but there was also additional material hidden,</p> <p>9 you know, just in other, in other files like</p> <p>10 the -- how does one call that, the transcript.</p> <p>11 Some transcripts of discussions led</p> <p>12 between probably as, if I remember that</p> <p>13 correctly, representatives of the -- of the</p> <p>14 Pharmacia/Pfizer and the FDA. So we also went</p> <p>15 through all of these transcripts naturally.</p> <p>16 Q. And would it be readily available,</p> <p>17 readily -- strike that.</p> <p>18 Would it be readily determinable by</p> <p>19 a layman who looked at the data on the website</p> <p>20 versus the JAMA article, which has been marked as</p> <p>21 Wolfe Exhibit 3, that there were contradictions</p> <p>22 between those two.</p> | <p>36</p> <p>1 We were talking about a change of</p> <p>2 definitions of main outcome measures. We haven't</p> <p>3 addressed yet that we were also talking about and</p> <p>4 presenting six-month results in Wolfe Exhibit 3</p> <p>5 in the JAMA article to the reader, while at the</p> <p>6 time point of the submission and of the</p> <p>7 publication, there were 12 to 15-month results</p> <p>8 available to the FDA, to the authors of the</p> <p>9 study, and, according to the protocol, these 12</p> <p>10 to 15-month results should have been published.</p> <p>11 That's how the FDA describes the procedure</p> <p>12 specified in the two trial protocols.</p> <p>13 BY MR. SAHAM:</p> <p>14 Q. And the two trials were -- one was</p> <p>15 12 months and one was 15 months; is that correct?</p> <p>16 A. That is correct, yes.</p> <p>17 Q. And the data being reported in the</p> <p>18 JAMA article, Wolfe Exhibit 3, only reports</p> <p>19 six-month's data?</p> <p>20 A. The Wolfe Exhibit 3 article just</p> <p>21 reports six-month data indeed. Whereas the</p> <p>22 protocols specified that the trials -- the two</p> |

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| <p>37</p> <p>1 trials would be closed when all of the patients<br/>2 had had the opportunity to undergo at least six<br/>3 months of treatment and was indicating that all<br/>4 of the data should have been included up to the<br/>5 maximum follow-up duration I was referring to,<br/>6 which was 12 months in one trial and 15 months in<br/>7 the second trial, correct.</p> <p>8 Q. And from your review of the<br/>9 materials on the FDA website, did you learn<br/>10 whether the second half of the trial was less<br/>11 favorable to celecoxib than the first portion of<br/>12 the trial?</p> <p>13 MR. WEISS: Object to the form of<br/>14 the question.</p> <p>15 THE WITNESS: We indeed learned<br/>16 this, and looking at Figure 2 of <u>Exhibit 32</u> we<br/>17 find a couple of Meier estimates for the primary<br/>18 outcome, that's a way of reporting over time,<br/>19 describing over time the pattern of events<br/>20 accumulating.</p> <p>21 And what was striking is that at six<br/>22 months there was a rather prominent difference</p> | <p>39</p> <p>1 half of the trial were in the celecoxib treatment<br/>2 group?</p> <p>3 MR. WEISS: Object to the form of<br/>4 the question.</p> <p>5 THE WITNESS: Based in our review,<br/>6 it was clear that the six events occurred after<br/>7 the time window that is Wolfe <u>Exhibit 3</u> actually<br/>8 was reporting as the main analysis, yes.</p> <p>9 BY MR. SAHAM:</p> <p>10 Q. And that was not disclosed in Wolfe<br/>11 <u>Exhibit 3</u>, the JAMA article?</p> <p>12 MR. WEISS: Object to the form of<br/>13 the question.</p> <p>14 THE WITNESS: This was a striking<br/>15 finding, also when looking at the correspondence<br/>16 then that was available on JAMA's website or as<br/>17 letters.</p> <p>18 And during a discussion with one of<br/>19 the editors of JAMA, we found out that JAMA was<br/>20 not informed. The reader was not informed. The<br/>21 public was not informed through this publication.<br/>22 The editors were not being put into</p>                                                                               |
| <p>38</p> <p>1 also for this primary outcome measure as<br/>2 specified in the protocol and in favor of<br/>3 celecoxib.</p> <p>4 After six months the additional<br/>5 events that accumulated, these events mainly<br/>6 accumulated in the celecoxib arms, arms plural,<br/>7 and if I remember correctly, there were six<br/>8 additional events that weren't censored. That's<br/>9 an analytical technique to exclude some events.<br/>10 Six additional events in the celecoxib arms, but<br/>11 only one additional event in one of the two NSAID<br/>12 arms, which was ibuprofen if I remember<br/>13 correctly.</p> <p>14 So it was striking that at six<br/>15 months there was quite a pronounced difference in<br/>16 favor of celecoxib and this entirely disappeared<br/>17 when you looked at the entire data available up<br/>18 to the maximum follow-up.</p> <p>19 BY MR. SAHAM:</p> <p>20 Q. So, based on your review of the<br/>21 website, it was clear that six of the seven<br/>22 complicated ulcers that occurred in the second</p>             | <p>40</p> <p>1 a position to make an informed decision, because<br/>2 nobody actually knew about the longer term data<br/>3 available at the time point, this Wolfe<br/>4 <u>Exhibit 3</u>, the basis for this was submitted to<br/>5 the editors or at the time point when it was<br/>6 published.</p> <p>7 BY MR. SAHAM:</p> <p>8 Q. And is there any explanation as to<br/>9 why that additional data was left out of the JAMA<br/>10 article?</p> <p>11 A. Are you referring to a justifiable<br/>12 explanation or to an explanation how it was<br/>13 subsequently given by the authors of the article.</p> <p>14 Q. Well, let's start with the JAMA<br/>15 article. Is there any explanation in the JAMA<br/>16 article as to why only six months of data were<br/>17 reported?</p> <p>18 A. The JAMA article does not state<br/>19 anything that makes reference to longer term data<br/>20 being available at the time point, you know, and<br/>21 amenable to analysis at the time point when this<br/>22 was published. There is absolutely no statement</p> |

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| <p>41</p> <p>1 relating to that.</p> <p>2 Q. Is that proper?</p> <p>3 A. This is clearly inadequate and is</p> <p>4 not justifiable from a scientific viewpoint.</p> <p>5 Q. And why is that?</p> <p>6 A. Because the article does not follow</p> <p>7 internationally established guidelines on</p> <p>8 reporting of randomized controlled trials and it</p> <p>9 does not follow the prespecified trial protocol.</p> <p>10 It is clear that any research plan</p> <p>11 that has been stipulated in the way the two</p> <p>12 research plans were, you know, being stipulated</p> <p>13 for the two trial protocols that led to this</p> <p>14 publication, that this -- these research plans</p> <p>15 need to be followed.</p> <p>16 It is possible that in addition to</p> <p>17 following the full research plan, you include</p> <p>18 sensitivity analyses, that's additional analysis</p> <p>19 that were decided upon post hoc and you</p> <p>20 transparently say, okay, that's the main</p> <p>21 analysis, that's the preplanned one with the</p> <p>22 preplanned duration, the preplanned number of</p> | <p>43</p> <p>1 The failure to disclose that</p> <p>2 information, did that change the impression of</p> <p>3 Celebrex described in the article which is Wolfe</p> <p>4 Exhibit 3?</p> <p>5 MR. WEISS: Object to the form of</p> <p>6 the question.</p> <p>7 THE WITNESS: The way the</p> <p>8 comparisons were described in Wolfe Exhibit 3,</p> <p>9 will lead to opposite conclusions, opposites in</p> <p>10 terms of, you know, potential benefits of</p> <p>11 Celebrex as compared with traditional NSAIDs as</p> <p>12 compared with what could have been known and</p> <p>13 presented and analyzed, actually, when the</p> <p>14 protocol -- if the protocol had been followed.</p> <p>15 So opposite conclusions, if you look</p> <p>16 at the full data available at the FDA website as</p> <p>17 compared to what was published. So I would say</p> <p>18 clearly this has clinical implications, yes,</p> <p>19 based on this article, Wolfe Exhibit 3, a</p> <p>20 clinician will conclude okay, Celebrex has a</p> <p>21 gastrointestinal advantage and this has been</p> <p>22 reasonably established. Based on the data that</p> |
| <p>42</p> <p>1 ulcer complications accumulating.</p> <p>2 In addition, based on experience we</p> <p>3 have or had, you know, during the trial, et</p> <p>4 cetera, we decided to do a secondary analysis.</p> <p>5 If the authors would have done that,</p> <p>6 you know, disclosing all the results and in</p> <p>7 addition also would have done their analysis that</p> <p>8 they published in here, things would have been</p> <p>9 kosher with the distinction between prespecified</p> <p>10 and post hoc.</p> <p>11 They didn't do that and this is</p> <p>12 scientifically unacceptable.</p> <p>13 Q. And what impact did their failure to</p> <p>14 do that have on a reader of the JAMA article?</p> <p>15 MR. WEISS: Object to the form of</p> <p>16 the question.</p> <p>17 BY MR. SAHAM:</p> <p>18 Q. Let me ask that differently.</p> <p>19 Did their failure to include the</p> <p>20 information you just described impact the --</p> <p>21 strike that question.</p> <p>22 What impact -- strike that.</p>                                                                                           | <p>44</p> <p>1 were at the same time were available at the FDA's</p> <p>2 website one would say, well, you know, the trial</p> <p>3 failed to show any advantage in terms of the</p> <p>4 primary end points and we're uncertain, so we</p> <p>5 need to have additional trials and we need to</p> <p>6 await what's coming.</p> <p>7 BY MR. SAHAM:</p> <p>8 Q. And when you're talking about the</p> <p>9 materials available on the FDA website, you</p> <p>10 didn't discover them until 2002 when you were</p> <p>11 doing your research, correct?</p> <p>12 A. I wouldn't be --</p> <p>13 MR. WEISS: Object to the form of</p> <p>14 the question.</p> <p>15 THE WITNESS: I wouldn't be exactly</p> <p>16 sure when we started to look into that. But we</p> <p>17 were clearly triggered, as we describe it in the</p> <p>18 editorial, by the JAMA correspondence in November</p> <p>19 2001, and, you know, the article in The</p> <p>20 Washington Post in August 2001.</p> <p>21 So, you know, these things are not</p> <p>22 obviously there. So you need to start to take --</p>                                                      |

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| <p style="text-align: right;">45</p> <p>1 you can't -- it just doesn't jump into your eyes.<br/> 2 BY MR. SAHAM:<br/> 3 Q. My question is, do you dispute -- or<br/> 4 strike that.<br/> 5 Do you know when the materials were<br/> 6 posted on the FDA website?<br/> 7 A. I can't remember that. But I may be<br/> 8 able to tell you this from the editorial. No, I<br/> 9 wouldn't be -- let me see. I probably wouldn't<br/> 10 be able to --<br/> 11 Q. My question is simply, you don't<br/> 12 know that the FDA materials were made<br/> 13 available -- you wouldn't dispute that the FDA<br/> 14 materials weren't posted on their website until<br/> 15 February of 2001, some approximately six months<br/> 16 after the JAMA article was published?<br/> 17 A. This could -- well, I certainly<br/> 18 wouldn't dispute that and this could well be the<br/> 19 time window when it comes up.<br/> 20 We accessed them in December of 2001<br/> 21 and this could well be about six to 10 months<br/> 22 after they were actually formally published on</p>                                                         | <p style="text-align: right;">47</p> <p>1 misleading?<br/> 2 A. This was one of the parts that<br/> 3 rendered the article misleading. I was already<br/> 4 referring to two others, but there is one more<br/> 5 that was quite problematic in my view.<br/> 6 Q. And what was that, sir?<br/> 7 A. They also changed the statistical<br/> 8 analysis plan. And the plan of combining<br/> 9 initially the results of the two trials into one<br/> 10 analysis was part of a venture that was carefully<br/> 11 trying to control something we call Type 1 error.<br/> 12 That's an error to conclude there is<br/> 13 a difference between two drugs when in reality<br/> 14 there is not.<br/> 15 So, in this case, an error to<br/> 16 conclude, for example, that celecoxib is more<br/> 17 beneficial, statistically more beneficial than<br/> 18 the comparator drugs when in reality this is not<br/> 19 the case.<br/> 20 So what they actually aimed at is a<br/> 21 two-step procedure. Step 1 would be we do a<br/> 22 statistical testing comparing all the celecoxib</p>                                                               |
| <p style="text-align: right;">46</p> <p>1 the website.<br/> 2 Q. And you write at the bottom of the<br/> 3 first page of <u>Exhibit 32</u> your British Medical<br/> 4 Journal editorial, quote, "Almost all of the<br/> 5 ulcer complications that had occurred during the<br/> 6 second half of the trials were in the users of<br/> 7 celecoxib." Is that an accurate statement?<br/> 8 A. This is -- there were, if I remember<br/> 9 that correctly, seven ulcer complications that<br/> 10 were not censored, that were included in the<br/> 11 principal analysis as submitted to the FDA.<br/> 12 Six of these were in celecoxib arms<br/> 13 and one of them was in a comparator arm, if I<br/> 14 remember correctly. Let me just check whether<br/> 15 this is right. This was in the -- probably in<br/> 16 the ibuprofen arm, but I couldn't be sure whether<br/> 17 it was in the ibuprofen or in the diclofenac arm,<br/> 18 but six versus one.<br/> 19 Q. And was that information disclosed<br/> 20 in the JAMA article, Wolfe <u>Exhibit 3</u>?<br/> 21 A. No.<br/> 22 Q. And did that render the article</p> | <p style="text-align: right;">48</p> <p>1 patients with all of the comparator patients with<br/> 2 ibuprofen and diclofenac.<br/> 3 If this comparison on the primary<br/> 4 outcome, on the primary end point, ulcer<br/> 5 complications reaches a prespecified level which<br/> 6 is international acceptance of statistical<br/> 7 significance 0.05, then they do a second step.<br/> 8 And in this second step they do a<br/> 9 (inaudible) comparison in one of the protocols,<br/> 10 the comparison of diclofenac and the other<br/> 11 protocol the comparison with ibuprofen.<br/> 12 And only if -- and that's crucial,<br/> 13 only if the first step leads to statistical<br/> 14 significance and the second step leads to<br/> 15 statistical significance, they would stipulate<br/> 16 that there is an advantage of celecoxib over<br/> 17 either of the two comparator drugs.<br/> 18 That's how it was prespecified in<br/> 19 the protocols, okay. It hasn't got to do<br/> 20 anything with what was published.<br/> 21 Q. And were those facts as you've<br/> 22 described them disclosed in Wolfe <u>Exhibit 3</u>, the</p> |



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| <p style="text-align: right;">49</p> <p>1 September JAMA article?</p> <p>2 A. Unfortunately not. They just were</p> <p>3 sticking with this, you know, shorter term,</p> <p>4 shorter time window of six months. They were</p> <p>5 just sticking to Step 1 to compare celecoxib with</p> <p>6 the NSAIDS combined and that's where they</p> <p>7 stopped.</p> <p>8 And based on that, they made the</p> <p>9 conclusions that they initially just was</p> <p>10 referring to when reading them from the abstract.</p> <p>11 Q. And was that one of the bases for</p> <p>12 your conclusion that the JAMA article was, in</p> <p>13 fact, misleading?</p> <p>14 MR. WEISS: Object to the form of</p> <p>15 the question.</p> <p>16 THE WITNESS: This was actually also</p> <p>17 one of the bases, as well together with the other</p> <p>18 ones that I was already referring to, yes.</p> <p>19 BY MR. SAHAM:</p> <p>20 Q. And does the JAMA article disclose</p> <p>21 anything about Type 1 error as you described it?</p> <p>22 A. I'm not sure whether I understand</p> | <p style="text-align: right;">51</p> <p>1 Q. And are you referring to Figure 2 of</p> <p>2 your British Medical Journal editorial?</p> <p>3 A. Yes. I'm referring to Figure 2 of</p> <p>4 Exhibit 32, yes.</p> <p>5 Q. And what is the basis for the data</p> <p>6 in the -- in Figure 2, your Kaplan-Meier curves</p> <p>7 in your article?</p> <p>8 A. The basis for that is the analysis</p> <p>9 presented by the FDA's medical and statistical</p> <p>10 reviewers. So this is basically just adopted</p> <p>11 directly from what was published on the FDA's</p> <p>12 website.</p> <p>13 Q. And is this information included in</p> <p>14 Wolfe Exhibit 3, the JAMA article we've been</p> <p>15 discussing?</p> <p>16 A. No.</p> <p>17 Q. And what impact did that have on the</p> <p>18 overall validity of the article?</p> <p>19 MR. WEISS: Object to the form of</p> <p>20 the question.</p> <p>21 THE WITNESS: Since the prespecified</p> <p>22 analysis plan was not respected in Silverstein</p>                            |
| <p style="text-align: right;">50</p> <p>1 the question about the attempts to control the</p> <p>2 Type 1 error or about, you know, the Type 1 error</p> <p>3 that they used for the analysis.</p> <p>4 Q. Was there any description in the</p> <p>5 JAMA article of the methods and the protocol to</p> <p>6 control for Type 1 error?</p> <p>7 A. No. The way of this segue analysis,</p> <p>8 segue analysis that I was just referring to was</p> <p>9 not described in Wolfe Exhibit 3.</p> <p>10 Q. And was that proper?</p> <p>11 A. No.</p> <p>12 Q. Was that misleading?</p> <p>13 A. Yes.</p> <p>14 Q. And what's a Kaplan-Meier curve?</p> <p>15 A. A Kaplan-Meier curve is a graphical</p> <p>16 way to display the accumulation of events over a</p> <p>17 period of time.</p> <p>18 So it will just use certain</p> <p>19 statistical methods to estimate the cumulative</p> <p>20 percentage of events occurring just over a</p> <p>21 certain time period, like in this case here, 12</p> <p>22 to 15 months.</p>                                               | <p style="text-align: right;">52</p> <p>1 and colleagues' article, Wolff Exhibit 3, and this</p> <p>2 means that the report that we're looking at by</p> <p>3 Silverstein and colleagues is statistically</p> <p>4 invalid.</p> <p>5 BY MR. SAHAM:</p> <p>6 Q. And does the Figure 2, the</p> <p>7 Kaplan-Meier curves for celecoxib, diclofenac and</p> <p>8 ibuprofen, from looking at that, was there a</p> <p>9 point in time during the trial where celecoxib</p> <p>10 looked the best in comparison to the other drugs?</p> <p>11 MR. WEISS: Object to the form of</p> <p>12 the question.</p> <p>13 THE WITNESS: As I pointed out</p> <p>14 before, it is quite surprising to find that at</p> <p>15 this follow-up duration of six months, the</p> <p>16 difference between celecoxib and the other two</p> <p>17 drugs is most pronounced and after that it</p> <p>18 decreases.</p> <p>19 BY MR. SAHAM:</p> <p>20 Q. And what does that mean, that it</p> <p>21 decreases?</p> <p>22 A. And that the potential advantage of</p> |

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| <p style="text-align: right;">53</p> <p>1 celecoxib over the two comparator drugs</p> <p>2 disappears over the second time window of seven</p> <p>3 to 12 months and it disappears entirely.</p> <p>4 Q. And is that disclosed in the JAMA</p> <p>5 article?</p> <p>6 A. No, unfortunately not.</p> <p>7 Q. And does that render the JAMA</p> <p>8 article misleading?</p> <p>9 A. Yes.</p> <p>10 Q. Turning back to the first page of</p> <p>11 the British Medical Journal, and I should ask</p> <p>12 you, when this was submitted to the British</p> <p>13 Medical Journal, was it subject to internal</p> <p>14 review at the journal?</p> <p>15 A. Yes.</p> <p>16 Q. And what does that mean to be</p> <p>17 subject to internal review?</p> <p>18 A. So first of all, this was not a</p> <p>19 commissioned editorial. Normally editorials get</p> <p>20 commissioned by the editors and they will then</p> <p>21 have -- well, quite a superficial review process</p> <p>22 internally.</p> | <p style="text-align: right;">55</p> <p>1 A. Okay.</p> <p>2 Q. So my question is, from your review</p> <p>3 of the FDA materials, did it become clear whether</p> <p>4 there was supposed to be an analysis of the data</p> <p>5 at six months as prespecified in the protocols?</p> <p>6 MR. WEISS: Object to the form of</p> <p>7 the question.</p> <p>8 THE WITNESS: I'm not 100 percent</p> <p>9 sure whether the arguments, some of the arguments</p> <p>10 brought up in favor of now having an additional</p> <p>11 analysis, not the main analysis, that's beyond</p> <p>12 any question, that the main analysis was not</p> <p>13 relating to six months, full stop.</p> <p>14 But I wouldn't be 100 percent sure</p> <p>15 whether there was any information indicating on</p> <p>16 the FDA website that some of the points made in</p> <p>17 favor of a six-month analysis would be reasonable</p> <p>18 and whether this was specified just beforehand</p> <p>19 rather than post hoc.</p> <p>20 I'm 99 percent sure that all of the</p> <p>21 arguments in favor of the six-month analysis were</p> <p>22 brought up by the trialists and the company at</p> |
| <p style="text-align: right;">54</p> <p>1 This editorial was submitted to the</p> <p>2 editors of the British Medical Journal without</p> <p>3 being invited and it was read and reviewed by</p> <p>4 several editors internally and it was also</p> <p>5 evaluated by legal advisors.</p> <p>6 Q. And then it was published by the</p> <p>7 journal?</p> <p>8 A. Yes.</p> <p>9 Q. And with respect to your review of</p> <p>10 the FDA materials, did it become apparent to you</p> <p>11 whether or not six months was a -- or strike</p> <p>12 that.</p> <p>13 From looking at the FDA materials,</p> <p>14 was six months -- a six-month analysis a</p> <p>15 prespecified end point to be evaluated per the</p> <p>16 protocols?</p> <p>17 MR. WEISS: Object to the form of</p> <p>18 the question.</p> <p>19 BY MR. SAHAM:</p> <p>20 Q. And if you don't understand my</p> <p>21 question, I can ask it better, because that</p> <p>22 wasn't quite a great question.</p>                     | <p style="text-align: right;">56</p> <p>1 the time point of submitting the material to the</p> <p>2 FDA.</p> <p>3 So the arguments brought up and</p> <p>4 vividly and transparently discussed by the FDA's</p> <p>5 reviewers were, in my view, mostly post hoc</p> <p>6 arguments in favor of the six-month analysis.</p> <p>7 They provided the six months</p> <p>8 analysis to the FDA in addition to the main</p> <p>9 analysis which covered the full-time windows.</p> <p>10 BY MR. SAHAM:</p> <p>11 Q. But the protocol itself would</p> <p>12 indicate when the analysis was supposed to occur?</p> <p>13 MR. WEISS: Object to the form of</p> <p>14 the question.</p> <p>15 THE WITNESS: Indeed. The protocol</p> <p>16 had a power analysis and this is a sample size</p> <p>17 calculation included. Now this sample size</p> <p>18 calculation was based on the estimated number of</p> <p>19 ulcer complications accumulating over time in the</p> <p>20 two protocols.</p> <p>21 And the protocols specified that</p> <p>22 there needed to be at least 45 ulcer</p>                                                                                        |



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| <p>57</p> <p>1 complications that would have occurred -- would<br/>2 have to occur in the two protocols or at least 20<br/>3 each, in each of the two protocols, so that the<br/>4 trial would be stopped, the patient recruitment<br/>5 and follow-up would be stopped, okay.<br/>6       So this means actually then after<br/>7 the trial was stopped there, there was, you know,<br/>8 no way out there. They needed to use the entire<br/>9 follow-up duration to accumulate the necessary or<br/>10 approximately the necessary number of events.<br/>11       If they would truncate the time<br/>12 window just to six months, they would miss the<br/>13 target number of events they would have to<br/>14 include in the analysis to have enough<br/>15 statistical precision.<br/>16 BY MR. SAHAM:<br/>17       Q. Now, the main outcome measure<br/>18 described on the first page of Wolfe <u>Exhibit 3</u>,<br/>19 the JAMA article, was that prespecified in the<br/>20 protocol?<br/>21       A. No.<br/>22       Q. And how do you know that?</p>                                        | <p>59</p> <p>1 the final line, and you just change the criteria<br/>2 of success during the horse race, then you will<br/>3 bias your results and may bias them just in<br/>4 favor, you know, to -- in favor of -- of your own<br/>5 needs and your own horse that you're actually<br/>6 favoring.<br/>7       So, to come back from this analogy<br/>8 to this, if you just change the criteria during a<br/>9 randomized trial or during two randomized trials,<br/>10 you are likely to be influenced by your<br/>11 statistical and clinical needs.<br/>12       And it is -- it's well possible that<br/>13 you endanger the analysis and that you then will<br/>14 wrongly conclude, based on the post hoc criteria<br/>15 that you changed over time, that they will<br/>16 wrongly conclude that there is a benefit of the<br/>17 experimental drug, when, in fact, there is no<br/>18 statistical evidence that suggests that.<br/>19       So changing the rules during a trial<br/>20 is never a good idea.<br/>21       Q. And is that what happened in this<br/>22 case?</p> |
| <p>58</p> <p>1       A. The FDA reviewers describe how the<br/>2 primary end point in the protocols were specified<br/>3 and how the definitions were made, and they<br/>4 explicitly refer to ulcer complications and<br/>5 nothing else as the primary end point.<br/>6       And this does not compare to what we<br/>7 have here as an impression of the main outcome<br/>8 measures so that the two terms, primary end point<br/>9 and main outcome measures, are used mostly<br/>10 synonymously in clinical epidemiology.<br/>11       It's not the same sort of main<br/>12 outcome measure that is published in Wolfe<br/>13 <u>Exhibit 3</u> as compared with the protocols<br/>14 described by the FDA reviewers.<br/>15       Q. And was that misleading?<br/>16       A. Yes.<br/>17       Q. And why is that?<br/>18       A. If you start to change the rules<br/>19 during a horse race, to use this analogy, and you<br/>20 just say, okay, you know, I have different<br/>21 criteria for success than just, you know, the<br/>22 time the horse takes until it reaches the goal or</p> | <p>60</p> <p>1       A. Yes.<br/>2       Q. Now, on the first page of your<br/>3 article, which has been marked as <u>Exhibit 32</u>,<br/>4 down towards the bottom, the last full paragraph<br/>5 you write, quote, "The Food and Drug<br/>6 Administration was concerned that selective COX 2<br/>7 inhibitors would interfere with the benefits of<br/>8 COX 2 in ulcer healing. This could lead to a<br/>9 long-term increase of ulcer-related complications<br/>10 that occur without warning symptoms."<br/>11       Is that accurate?<br/>12       A. Yes.<br/>13       Q. And what's the significance of that<br/>14 statement in your article?<br/>15       A. At that time point, it wasn't clear<br/>16 whether there were systematic differences between<br/>17 the symptoms experienced by a patient who takes a<br/>18 traditional anti-inflammatory drug like<br/>19 diclofenac and a patient who takes a COX 2<br/>20 selective inhibitor like celecoxib.<br/>21       And it was discussed that it could<br/>22 be that the novel mechanism, the more selective</p>       |

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| <p style="text-align: right;">61</p> <p>1 mechanism of celecoxib would lead to a decrease<br/> 2 in experiencing symptoms. So it could<br/> 3 theoretically be that you have an ulcer, a hole<br/> 4 in your stomach, and no symptoms.<br/> 5 So, if this is the case, this ulcer<br/> 6 could get worse and worse, theoretically since<br/> 7 you don't have symptoms, the symptoms don't<br/> 8 protect you, you know, from continuing taking the<br/> 9 drug and they don't trigger you to go to your<br/> 10 doctor and ask him, hey, what shall I do.<br/> 11 So it may well be, at that time<br/> 12 point it was the argument of that. It may well<br/> 13 be then, okay, that for severe complications like<br/> 14 the ulcer complications that were the primary end<br/> 15 point of the two trials described in CLASS, that<br/> 16 for these ulcer complications they are indeed<br/> 17 could be even a detrimental effect against, you<br/> 18 know, which would speak against actually the<br/> 19 COX 2 selective inhibitors, against celecoxib,<br/> 20 because the warning signs could lack.<br/> 21 Q. And was that disclosed in Wolfe<br/> 22 <u>Exhibit 3</u>, the JAMA article?</p> | <p style="text-align: right;">63</p> <p>1 protocol.<br/> 2 But, if you then just, you know, go<br/> 3 on and start to justify the decision to report<br/> 4 this just in the light of these aspects, then you<br/> 5 probably would just also need to discuss the<br/> 6 issues we were just talking about here.<br/> 7 Q. And on the second page of your<br/> 8 article, the British Medical Journal article,<br/> 9 which has been marked as Plaintiff's <u>Exhibit 32</u>,<br/> 10 the first full paragraph, the second sentence you<br/> 11 write, quote, "They failed to justify the<br/> 12 post hoc changes in design outcomes and analysis<br/> 13 and provided an unconvincing explanation for<br/> 14 considering the six-month follow-up only."<br/> 15 Was that an accurate statement when<br/> 16 you wrote it?<br/> 17 A. Yes.<br/> 18 Q. And is it an accurate statement<br/> 19 today?<br/> 20 A. Yes.<br/> 21 Q. And what is the significance of that<br/> 22 statement?</p>                                                       |
| <p style="text-align: right;">62</p> <p>1 A. I wouldn't be sure, as far as I<br/> 2 remember no. And we had a subsequent discussion<br/> 3 about these issues when the authors -- or, well,<br/> 4 Steven Geis, as the senior author of Wolfe<br/> 5 <u>Exhibit 3</u> actually was debating our editorial.<br/> 6 And I think it was not disclosed in<br/> 7 the JAMA article and would be surprised if it<br/> 8 was, from my point of view, for the first time<br/> 9 part of it was disclosed when they replied to our<br/> 10 editorial.<br/> 11 Q. And we'll talk about that in a<br/> 12 minute.<br/> 13 But, if that information was not<br/> 14 brought to light, could that be dangerous to<br/> 15 patients using celecoxib?<br/> 16 A. What I'm talking about here is a<br/> 17 mechanistic explanation which again is based on<br/> 18 theory and on post hoc analysis that also we<br/> 19 performed.<br/> 20 I could easily live with, you know,<br/> 21 them not discussing it in the discussion section,<br/> 22 et cetera, if they would have followed the</p>                                                                                                                           | <p style="text-align: right;">64</p> <p>1 A. In their reply to the letters<br/> 2 published in JAMA, the authors of the CLASS<br/> 3 study, Wolfe <u>Exhibit 3</u>, were explaining that the<br/> 4 decision to restrict the analysis to six-month --<br/> 5 to the six-month time window only was based on<br/> 6 the observation of differences in the way<br/> 7 patients were lost in the study and the way<br/> 8 patients withdrew from the study.<br/> 9 And they were describing that based<br/> 10 on these differences that were systematic<br/> 11 actually everything else extending over six<br/> 12 months in the analysis would have been biased<br/> 13 against celecoxib and would have made the<br/> 14 analysis, the subsequent analysis misleading.<br/> 15 Q. And was there any attempt to<br/> 16 describe that theory in the JAMA article, Wolfe<br/> 17 <u>Exhibit 3</u>?<br/> 18 A. No.<br/> 19 Q. And was that proper?<br/> 20 A. No, it wasn't.<br/> 21 Q. And why not?<br/> 22 A. If you -- and that's not part of,</p> |

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| <p style="text-align: right;">65</p> <p>1 you know, promoting scientific debate. If you<br/>2 believe that, indeed, and this can always happen,<br/>3 you know, a trial went wrong, there were things<br/>4 that clinical research were doing, things that<br/>5 were not happening as expected.<br/>6 And you need to describe your<br/>7 hypothesis, you are able to test the hypothesis,<br/>8 and to provide, you know, the outcomes of the<br/>9 statistical tests you did, you know, addressing<br/>10 your hypothesis.<br/>11 And then you give the reader the<br/>12 opportunity actually to decide for him or herself<br/>13 whether the hypothesis, as a basis for the<br/>14 decision to have an additional analysis of six<br/>15 months, you know, is valid or not. They just<br/>16 didn't do anything like that.<br/>17 First of all, they just provided the<br/>18 six-month results and provided the impression<br/>19 that that's the only analysis available.<br/>20 They did not discuss the issues that<br/>21 they subsequently brought up as arguments in<br/>22 favor of the six-month results, of course, and</p> | <p style="text-align: right;">67</p> <p>1 protocol and these post hoc changes necessarily,<br/>2 there's absolutely no question about that, need<br/>3 to be brought to the attention of the editors and<br/>4 to the attention of the peer reviewers, because<br/>5 all post hoc changes done like that will endanger<br/>6 the scientific validity of a publication.<br/>7 If an editor and the peer reviewer<br/>8 doesn't know about that, this is misleading.<br/>9 Q. And was it proper to not tell or not<br/>10 disclose in the JAMA article the results of the<br/>11 second six months?<br/>12 MR. WEISS: Object to the form of<br/>13 the question.<br/>14 THE WITNESS: No. No. It was<br/>15 improper -- it was inadequate to do so.<br/>16 BY MR. SAHAM:<br/>17 Q. And did you analyze at some point<br/>18 the post hoc justifications that Dr. Geis and<br/>19 others associated with the JAMA article put<br/>20 forward as an explanation for their publication<br/>21 of six months data?<br/>22 A. Yes, we did so. And you can, as I</p>               |
| <p style="text-align: right;">66</p> <p>1 they did not provide any tests of their<br/>2 hypothesis that indeed what they were stipulating<br/>3 was right.<br/>4 Q. And did that circumvent the peer<br/>5 review process?<br/>6 MR. WEISS: Object to the form of<br/>7 the question.<br/>8 THE WITNESS: Since neither the<br/>9 editors nor the peer reviewers, I assume, you<br/>10 know, would know anything about the available of<br/>11 longer term data of the issues that were<br/>12 subsequently discussed, and this could have not<br/>13 been subjected to any peer review or to any<br/>14 editorial review.<br/>15 The editors and probably also the<br/>16 peer reviewers were just totally unaware of these<br/>17 issues at that time.<br/>18 BY MR. SAHAM:<br/>19 Q. And was that misleading?<br/>20 A. Yes.<br/>21 Q. Why?<br/>22 A. There were post hoc changes to the</p>                                                                                                                                                                                                                                             | <p style="text-align: right;">68</p> <p>1 indicated before, statistically test, you know,<br/>2 the sorts of statements that they made. And you<br/>3 can statistically test whether the patterns you<br/>4 observe in terms of rates of withdrawal and<br/>5 losses to follow-up, the patterns of side<br/>6 effects, gastrointestinal symptoms the patients<br/>7 observed, et cetera, whether they actually are in<br/>8 accordance with the hypothesis that they just<br/>9 brought up as a justification for their decision<br/>10 here.<br/>11 And from our point of view we did<br/>12 not find any statistical evidence to support the<br/>13 notion.<br/>14 So that is important, you know, this<br/>15 just means that, you know, in the absence of such<br/>16 evidence, you don't have then any clear momentum<br/>17 to justify even the sensitivity analysis, you<br/>18 know, restricted to six months.<br/>19 Q. And did you discuss that in a<br/>20 subsequent submission to the British Medical<br/>21 Journal?<br/>22 A. Yes, we did. There was a</p> |

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| <p>69</p> <p>1 correspondence section dedicated partially to<br/>2 responses to this editorial and this included<br/>3 also a response of Steven Geis at that time, I<br/>4 assume from Pharmacia, discussing these issues<br/>5 and we replied to that, yes.<br/>6 (Exhibit Number 161<br/>7 marked for identification.)<br/>8 BY MR. SAHAM:<br/>9 Q. I want to show you what I've marked<br/>10 as Plaintiff's Exhibit 161. Could you take a<br/>11 look at that document.<br/>12 A. Uh-huh.<br/>13 Q. And do you recognize Plaintiff's<br/>14 Exhibit 161?<br/>15 A. Yes. That is our response to Steven<br/>16 Geis' statements and comment to our editorial as<br/>17 was published in BMJ, USA in December of 2002.<br/>18 Q. And this article which was published<br/>19 by the British Medical Journal or this -- strike<br/>20 that.<br/>21 This submission, which was published<br/>22 by the British Medical Journal, contains your</p>                                                              | <p>71</p> <p>1 protocol compared with the patient included in<br/>2 the second protocol. It's beyond any question<br/>3 that this is inappropriate.<br/>4 Then we were addressing the point of<br/>5 aspirin use. We haven't talked about that yet.<br/>6 This was also, you know, an additional point made<br/>7 by the authors of Wolfe Exhibit 3, the<br/>8 Silverstein article and the CLASS study published<br/>9 in JAMA, that the effects, probably the<br/>10 beneficial effects of celecoxib were less<br/>11 pronounced in the CLASS study as compared to<br/>12 other situations because a considerable<br/>13 proportion of patients would have had aspirin<br/>14 mainly for cardiovascular protection, you know,<br/>15 at the low dose of 100 milligrams.<br/>16 And we also looked into that, they<br/>17 would stipulate, okay, that the presence of<br/>18 aspirin, if I take aspirin, this leads to<br/>19 something we call effect modification meaning<br/>20 there is a beneficial effect to be seen in<br/>21 patients taking celecoxib as compared with<br/>22 patients taking one of the comparator drugs.</p> |
| <p>70</p> <p>1 analysis of their biased justification; is that<br/>2 correct?<br/>3 MR. WEISS: Object to the form of<br/>4 the question.<br/>5 BY MR. SAHAM:<br/>6 Q. Let me ask it again. What was the<br/>7 purpose of your submitting Exhibit 161?<br/>8 A. This was part of a response to all<br/>9 of the correspondence that were addressing our<br/>10 editorial initially electronically on BMJ's<br/>11 website. And then subsequently also just in<br/>12 print form, here on BMJ USA, but also just on the<br/>13 regular BMJ journal in the UK.<br/>14 And what we were doing, we were<br/>15 addressing just the different specific points<br/>16 that were being brought up by Geis.<br/>17 So there was a point that it was<br/>18 appropriate, you know, to describe the trials as<br/>19 one trial with a 2:1:1 randomization and we were<br/>20 addressing that, that this wasn't appropriate.<br/>21 There were systematic differences<br/>22 between the patients included in one trial</p> | <p>72</p> <p>1 If these patients do not have<br/>2 aspirin and there is no beneficial effect to be<br/>3 seen in celecoxib versus diclofenac or ibuprofen<br/>4 in patients taking aspirin, that's what they were<br/>5 stipulating.<br/>6 And that's also how they were<br/>7 specifying and describing it in the manuscript.<br/>8 We were addressing that and again you can test<br/>9 this, you know, you can test this hypothesis by<br/>10 doing a test for interaction and this test for<br/>11 interaction was negative and, you know, the<br/>12 confidence intervals actually that were shown in<br/>13 Figure 1 of Exhibit 161 were all overlapping<br/>14 widely, indicating that again the authors did not<br/>15 have any evidence to suggest that this, indeed,<br/>16 was the case.<br/>17 It can be the case, but they need to<br/>18 establish it statistically and they haven't done<br/>19 so.<br/>20 Q. And did that render the JAMA article<br/>21 misleading?<br/>22 A. It's a frequently made mistake. And</p>                                                                                                  |

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| <p style="text-align: right;">73</p> <p>1 I would expect from a knowledgeable group as this</p> <p>2 group to do a better job and to formally do tests</p> <p>3 for interaction and indicate that actually they</p> <p>4 don't have statistical evidence to support their</p> <p>5 notion, they haven't done so.</p> <p>6 I would say it contributes to my</p> <p>7 discomfort that I have, but I wouldn't, you know,</p> <p>8 emphasize -- I wouldn't put my focus as strongly</p> <p>9 on that as on the other issues.</p> <p>10 Q. And the JAMA article presents a</p> <p>11 nonaspirin analysis; is that correct?</p> <p>12 A. I think the JAMA article, let me</p> <p>13 just quickly check, presents both an aspirin and</p> <p>14 a nonaspirin analysis, let me just quickly see.</p> <p>15 Toxicity with aspirin use is a</p> <p>16 paragraph included in the JAMA article on</p> <p>17 Page 1251 in the middle column.</p> <p>18 Q. And my question is, the</p> <p>19 aspirin/nonaspirin analysis in JAMA, that was not</p> <p>20 prespecified in the protocol or was the</p> <p>21 presentation of an analysis for nonaspirin users</p> <p>22 specified in the protocol?</p> | <p style="text-align: right;">75</p> <p>1 And for all of these effect</p> <p>2 estimates, the 95 percent confidence interval</p> <p>3 will overlap the null effect at one. One</p> <p>4 indicates there's absolutely no different between</p> <p>5 celecoxib and diclofenac, absolutely nothing.</p> <p>6 The outcomes are identical. If a</p> <p>7 95 percent confidence interval overlaps this null</p> <p>8 effect line, this indicates we don't have any</p> <p>9 statistical evidence that celecoxib is better</p> <p>10 than diclofenac.</p> <p>11 And it is striking, you know, that</p> <p>12 we have all of these comparisons by pure chance</p> <p>13 one actually could turn out to be, you know,</p> <p>14 statistically significant if we have how many</p> <p>15 were there, two, four, six, eight, 10, 12, 14,</p> <p>16 16, 18, I would expect that probably one would</p> <p>17 come out or would nearly come out.</p> <p>18 None of them is coming out of</p> <p>19 statistical significance. So we have a saying</p> <p>20 among epidemiologists, you know, torture the data</p> <p>21 until they confess.</p> <p>22 That's what we did actually, you</p> |
| <p style="text-align: right;">74</p> <p>1 A. I can't remember. I can't remember.</p> <p>2 But what I see here is just that this is -- has</p> <p>3 been given quite some emphasis, this presence or</p> <p>4 absence of aspirin being an effect modifier. We</p> <p>5 talk about that and that it has not been properly</p> <p>6 addressed in statistical terms.</p> <p>7 Q. Now, looking back at Plaintiff's</p> <p>8 Exhibit 161, your September 2002 response to</p> <p>9 Dr. Geis, you write on the second page of your</p> <p>10 article, quote, "While there were some</p> <p>11 significant differences between celecoxib and</p> <p>12 ibuprofen, there were none between celecoxib and</p> <p>13 diclofenac and effect estimates were scattered</p> <p>14 around the null effect." Is that an accurate</p> <p>15 statement?</p> <p>16 A. Yes, indeed.</p> <p>17 Q. And what's the basis for that</p> <p>18 statement?</p> <p>19 A. Well, the striking pattern we see in</p> <p>20 Figure 1 of Exhibit 161 and on the left-hand side</p> <p>21 of -- on this figure, you see all of the effect</p> <p>22 estimates comparing celecoxib with diclofenac.</p>                    | <p style="text-align: right;">76</p> <p>1 know, with all these analyses. By pure chance</p> <p>2 one would have to come out even perhaps with an</p> <p>3 advantage for celecoxib or so. We don't see</p> <p>4 anything.</p> <p>5 That's a clear cut null effect, you</p> <p>6 know. In this analysis for everything, celecoxib</p> <p>7 appears to be equivalent to diclofenac, full</p> <p>8 stop. If somebody wants to suggest the opposite,</p> <p>9 he or she needs to provide additional data, full</p> <p>10 stop.</p> <p>11 Q. And was the equivalence of</p> <p>12 diclofenac and celecoxib disclosed in the JAMA</p> <p>13 article, Wolff Exhibit 3?</p> <p>14 A. No.</p> <p>15 Q. And did it render that article</p> <p>16 misleading?</p> <p>17 A. Yes.</p> <p>18 Q. We need to actually change the tape</p> <p>19 now so we have to go off the record.</p> <p>20 A. Okay.</p> <p>21 THE VIDEOGRAPHER: Off the record at</p> <p>22 11:53 a.m.</p>                                                                                                                                                                                                                |



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| <p style="text-align: right;">77</p> <p>1 (Recess -- 11:53 a.m.-12:00 p.m.)</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Tape Number 2. Back on the record</p> <p>4 at 12:00 p.m.</p> <p>5 BY MR. SAHAM:</p> <p>6 Q. Dr. Juni, we're still looking at</p> <p>7 your submission to the BMJ of September of 2002,</p> <p>8 which we've marked as <u>Exhibit 161</u>, and on the</p> <p>9 second page you write, quote, "The wide</p> <p>10 confidence intervals indicate that the trials</p> <p>11 were under powered, reflect uncertainty about the</p> <p>12 gastrointestinal benefits of celecoxib, and</p> <p>13 underscore the need for a meta-analysis of</p> <p>14 individual patient data." Is that an accurate</p> <p>15 statement?</p> <p>16 A. Yes.</p> <p>17 Q. And was that information disclosed</p> <p>18 in the JAMA article, which is Wolfe <u>Exhibit 3</u>?</p> <p>19 A. Probably not. I wouldn't remember</p> <p>20 that. I wouldn't give this too much emphasis,</p> <p>21 you know, we're -- it's actually -- this is the</p> <p>22 trial, a description of the two trials sold as</p>                                       | <p style="text-align: right;">79</p> <p>1 second period of the trial of seven to</p> <p>2 12/15 months was dominated by withdrawals of</p> <p>3 patients because of gastrointestinal symptoms.</p> <p>4 And that this was, you know,</p> <p>5 happening in an asymmetrical fashion and that</p> <p>6 since this would be or could be a precursor, you</p> <p>7 know, to withdrawal because of gastrointestinal</p> <p>8 symptoms of ulcer complications. So when I'm</p> <p>9 experiencing gastrointestinal symptoms, I'm at</p> <p>10 increased risk of having a subsequent ulcer</p> <p>11 complication. That's the fact of this asymmetry</p> <p>12 in withdrawals because of gastrointestinal</p> <p>13 symptoms would bias results.</p> <p>14 Q. And was there any --</p> <p>15 A. Sorry -- and make the trial results</p> <p>16 after six months invalid.</p> <p>17 Now, we looked into that asking,</p> <p>18 okay, are gastrointestinal symptoms, that's a</p> <p>19 very preliminary analysis we did, that's just as</p> <p>20 good as it gets based on the narratives that were</p> <p>21 available at the website of the FDA.</p> <p>22 We looked into that asking whether,</p>                      |
| <p style="text-align: right;">78</p> <p>1 one, unfortunately.</p> <p>2 And this statement here now refers,</p> <p>3 you know, to a meta level to the entire body of</p> <p>4 evidence being available. So I can easily live</p> <p>5 without this being stated in this article.</p> <p>6 Q. And moving onto the next, next</p> <p>7 paragraph on the next column, you write, quote,</p> <p>8 "We evaluated a narrative review of the 44 CLASS</p> <p>9 patients who experienced ulcer complications.</p> <p>10 None had a symptomatic ulcer as a precursor.</p> <p>11 Only 11 patients (25%) developed gastrointestinal</p> <p>12 symptoms before the ulcer complication occurred.</p> <p>13 The remainder experiencing either no symptoms,</p> <p>14 (39%) or symptoms on the same day as the ulcer</p> <p>15 complication (36%). Thus, gastrointestinal</p> <p>16 adverse events were at best sentinel symptoms."</p> <p>17 Is that accurate as you wrote it?</p> <p>18 A. Yes.</p> <p>19 Q. And what's the significance of that</p> <p>20 statement?</p> <p>21 A. One of the arguments of the trial</p> <p>22 was to present the six-month data, that the</p> | <p style="text-align: right;">80</p> <p>1 indeed, experiencing gastrointestinal symptoms</p> <p>2 makes you more likely to have a subsequent ulcer</p> <p>3 complication, and we did not find statistical</p> <p>4 evidence supporting this notion.</p> <p>5 Actually we found the opposite. We</p> <p>6 found that gastrointestinal symptoms, once you</p> <p>7 experience them, actually appear to have even a</p> <p>8 protective effect, so you're less likely to</p> <p>9 experience a subsequent ulcer complication when</p> <p>10 you have initial gastrointestinal symptoms, which</p> <p>11 again is in line with what I stipulated before.</p> <p>12 If I, as a patient, have</p> <p>13 gastrointestinal symptoms, it gives me the</p> <p>14 opportunity to visit my physician and tell him,</p> <p>15 hey, do I really tolerate these painkillers here</p> <p>16 or should we do something and gives the physician</p> <p>17 actually the possibility also to make an</p> <p>18 evaluation like an endoscopy for instance.</p> <p>19 Q. Was there a basis for the authors of</p> <p>20 the JAMA article to not include the full study</p> <p>21 data?</p> <p>22 MR. WEISS: Object to the form of</p> |

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| <p style="text-align: right;">81</p> <p>1 the question.</p> <p>2 THE WITNESS: There was absolutely</p> <p>3 no scientific basis for that.</p> <p>4 If they would have wanted to stick</p> <p>5 to the point of view, which is a point of view</p> <p>6 that can be, you know, openly discussed, they</p> <p>7 could have presented the main analysis as</p> <p>8 specified in the protocol and done a secondary</p> <p>9 analysis, as they did it also, you know, for the</p> <p>10 FDA, restrict it to six months, and they could</p> <p>11 have transparently reported all of their</p> <p>12 arguments.</p> <p>13 This would have put the clinical</p> <p>14 colleagues, the reader, et cetera, into a</p> <p>15 position to decide for him or herself. This has</p> <p>16 not been done. This cannot be justified.</p> <p>17 BY MR. SAHAM:</p> <p>18 Q. And, based on your analysis, you</p> <p>19 disagree with the claim of bias?</p> <p>20 A. Based on our analysis, I disagree</p> <p>21 with the statement that the pattern here clearly</p> <p>22 indicates that the results extending beyond six</p> | <p style="text-align: right;">83</p> <p>1 conclude that CLASS' failure to demonstrate the</p> <p>2 superiority of celecoxib may have more to do with</p> <p>3 the drug's shortcomings as a selective COX 2</p> <p>4 inhibitor than with the shortcomings of the</p> <p>5 trial." Is that an accurate statement?</p> <p>6 A. At that time point it was. Today I</p> <p>7 would phrase it differently, because I know more,</p> <p>8 because we did additional research.</p> <p>9 Today I believe that still, you</p> <p>10 know, the trial had shortcomings, and I -- this</p> <p>11 could have -- these shortcomings could have been</p> <p>12 transparently reported, of course, but I think</p> <p>13 that the celecoxib as a drug, perhaps not</p> <p>14 compared to diclofenac, but compared to other</p> <p>15 nonselective antiinflammatory drugs, actually</p> <p>16 might have a point.</p> <p>17 But not at that time point and not</p> <p>18 based on what was included there. So today I</p> <p>19 would rephrase it, but based on additional eight</p> <p>20 years of research activity.</p> <p>21 Q. Now, looking back at the British</p> <p>22 Medical Journal June 2002 editorial which we've</p> |
| <p style="text-align: right;">82</p> <p>1 months are biased against celecoxib.</p> <p>2 We don't have statistical evidence</p> <p>3 to support this notion. It can be debated. It</p> <p>4 can be openly discussed, but there is absolutely</p> <p>5 no evidence to suggest that this, indeed, would</p> <p>6 be valid and that this would justify what has</p> <p>7 been done with Wolfe Exhibit 3 to just publish</p> <p>8 the time window up to six months.</p> <p>9 Q. And in the next paragraph of</p> <p>10 Exhibit 161 you write, quote, "For the time</p> <p>11 being, there is no evidence that celecoxib is</p> <p>12 superior to diclofenac and insufficient evidence</p> <p>13 favoring celecoxib over ibuprofen." Is that</p> <p>14 accurate?</p> <p>15 A. Yes.</p> <p>16 Q. And was that disclosed in the JAMA</p> <p>17 article?</p> <p>18 A. No.</p> <p>19 Q. And did that omission render the</p> <p>20 JAMA article misleading?</p> <p>21 A. Yes.</p> <p>22 Q. Skipping down, you write, "We</p>                                                                                              | <p style="text-align: right;">84</p> <p>1 marked as Exhibit 32, on the second page you</p> <p>2 write, quote, "About 30,000 reprints of CLASS</p> <p>3 were bought from the publisher (W. Bartolotta,</p> <p>4 Personal Communications) and a recent search of</p> <p>5 the Science Citations Index yielded 169 articles</p> <p>6 citing it." Is that an accurate statement?</p> <p>7 A. Yes.</p> <p>8 Q. And what's the basis for that</p> <p>9 statement?</p> <p>10 A. We were concerned about, you know,</p> <p>11 the distribution of this misleading article in</p> <p>12 the community and the distribution can happen</p> <p>13 clearly electronically, especially at that time</p> <p>14 point, but probably still today also through</p> <p>15 reprints distributed by the manufacturer of the</p> <p>16 drug.</p> <p>17 And we actually were contacting the</p> <p>18 JAMA's editorial office to find out about the</p> <p>19 number of ordered reprints, that's the numbers we</p> <p>20 got. The other thing which is important is how</p> <p>21 frequently an article is cited.</p> <p>22 So, you know, you distribute</p>                                                                          |



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| <p style="text-align: right;">85</p> <p>1 knowledge also -- or knowledge is being<br/> 2 distributed also by now being cited by other<br/> 3 articles. And it was clear that this article at<br/> 4 that time point has had, you know, major numbers<br/> 5 of citations already rather early on.<br/> 6 So this just indicates that the<br/> 7 article and not the material on the FDA website<br/> 8 was just actively and massively distributed, made<br/> 9 its way into the mind of clinical colleagues and<br/> 10 into the mind of decision makers, et cetera, and<br/> 11 certainly not, you know, just the material that<br/> 12 would theoretically have been in a cryptic way be<br/> 13 available on the FDA website unfortunately.<br/> 14 Q. And what is the significance of that<br/> 15 material being distributed -- or strike that.<br/> 16 What's the significance of the JAMA<br/> 17 article being widely distributed to clinicians?<br/> 18 MR. WEISS: Object to the form of<br/> 19 the question.<br/> 20 THE WITNESS: To publish a pivotal<br/> 21 trial in one of the major journals is a major<br/> 22 driver of credibility for a manufacturer of drugs</p> | <p style="text-align: right;">87</p> <p>1 these ones.<br/> 2 Actually I've got the wrong ones I<br/> 3 take it back. I'm talking about Figure 2 on<br/> 4 Page 1251.<br/> 5 I would readily believe everything<br/> 6 which is stipulated in the abstract, you know,<br/> 7 not knowing -- with my background in clinical<br/> 8 epidemiology and clinical medicine, not knowing<br/> 9 that there is alternative material available<br/> 10 somewhere else, I look into that and say, oh,<br/> 11 okay, they sort of missed statistical<br/> 12 significance for one of the two primary end<br/> 13 points, one of the two main outcomes.<br/> 14 But actually the pattern is so clear<br/> 15 and, yes, it could well be that aspirin has<br/> 16 mitigated some of the benefits of celecoxib full<br/> 17 stop. Yes, based on this trial, celecoxib is<br/> 18 better than the comparators.<br/> 19 That's what I conclude as an<br/> 20 educated reader actually with 15 years of<br/> 21 clinical epidemiology background and quite a lot<br/> 22 of clinical background. So this has an impact</p> |
| <p style="text-align: right;">86</p> <p>1 or medical devices.<br/> 2 And, you know, that this has the<br/> 3 seal of, you know, being peer-reviewed, being in<br/> 4 one of the high impact journals, et cetera.<br/> 5 And this really just, how does one<br/> 6 call that in English, lends credibility to your<br/> 7 product and to your study and this has a lot of<br/> 8 significance to have a paper like that. That's<br/> 9 clear.<br/> 10 BY MR. SAHAM:<br/> 11 Q. Would it lead to more prescriptions<br/> 12 of Celebrex?<br/> 13 A. This would lead to more and more<br/> 14 people concluding that there is an advantage of<br/> 15 Celebrex over the two comparator drugs,<br/> 16 including, as you said clinicians and including<br/> 17 decision makers, perhaps at the health insurance<br/> 18 companies and also other people clearly, yes.<br/> 19 Looking at the pattern, you know,<br/> 20 that I see in this paper, and looking at the, you<br/> 21 know, the bar charts that are presented on<br/> 22 Page 1253 of Wolfe <u>Exhibit 3</u> -- sorry, that's not</p>                                                                                          | <p style="text-align: right;">88</p> <p>1 beyond any doubt.<br/> 2 Q. And was that impact misleading?<br/> 3 A. Yes.<br/> 4 Q. Now, turning back to your article,<br/> 5 the June 2002 British Medical Journal, which<br/> 6 we've marked as <u>Exhibit 32</u>, you write, towards<br/> 7 the bottom of the first column, the last<br/> 8 paragraph there on the second page, quote,<br/> 9 "Publishing and distributing<br/> 10 overoptimistic short-term data using post hoc<br/> 11 changes to the protocol, while omitting<br/> 12 disappointing long-term data of two trials, which<br/> 13 involved large numbers of volunteers, is<br/> 14 misleading." Is that an accurate statement?<br/> 15 A. Yes.<br/> 16 Q. And what is the basis for that<br/> 17 statement?<br/> 18 A. The basis of that statement is that<br/> 19 many patients volunteered to participate in<br/> 20 these, you know, in these trials, in the belief<br/> 21 actually that the trials would be analyzed in a<br/> 22 scientifically valid manner without any selective</p>                                              |

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| <p style="text-align: right;">89</p> <p>1 reporting of data.<br/> 2 And it is also ethically totally<br/> 3 unjustifiable then just to selectively report,<br/> 4 based on the post hoc implications and post hoc<br/> 5 criteria, the data the way these authors of Wolfe<br/> 6 <u>Exhibit 3</u> did.<br/> 7 Q. And you refer in your editorial to<br/> 8 quote "something being" -- or, strike that.<br/> 9 What's industry independence?<br/> 10 A. Industry independence is a construct<br/> 11 of -- for clinical trials now of performing<br/> 12 clinical trials or well any other research in the<br/> 13 absence of support and influence of commercial<br/> 14 institutions.<br/> 15 Q. And was Wolfe <u>Exhibit 3</u> industry<br/> 16 independent in your view?<br/> 17 A. Well, it clearly wasn't.<br/> 18 Q. And why not?<br/> 19 A. This trial was part of the approval<br/> 20 process of celecoxib. It was funded by the<br/> 21 company. There were authors on the author list,<br/> 22 especially the senior author of the paper, which</p> | <p style="text-align: right;">91</p> <p>1 that I asked the question before.<br/> 2 A. Oh, okay.<br/> 3 Q. But, I'll ask it yet again. In your<br/> 4 view --<br/> 5 MR. WEISS: We haven't heard you<br/> 6 answer that question 15 times.<br/> 7 BY MR. SAHAM:<br/> 8 Q. -- was Wolfe <u>Exhibit 3</u> misleading?<br/> 9 A. Wolfe <u>Exhibit 3</u> was a misleading<br/> 10 representation of the results of the two CLASS<br/> 11 studies, yes.<br/> 12 MR. SAHAM: And subject to redirect,<br/> 13 I have no further questions. It may be<br/> 14 beneficial just to take a break, so we can --<br/> 15 MR. WEISS: I'm ready to go.<br/> 16 MR. SAHAM: You're ready to go. Do<br/> 17 you need to go to the bathroom?<br/> 18 THE WITNESS: I will quickly go to<br/> 19 the bathroom now.<br/> 20 THE VIDEOGRAPHER: Off the record at<br/> 21 12:15 p.m.<br/> 22 (Recess -- 12:15-12:19 p.m.)</p>                       |
| <p style="text-align: right;">90</p> <p>1 is in a prominent position that they are actually<br/> 2 affiliated with the company.<br/> 3 And this is the, you know, the<br/> 4 opposite example of industry independence<br/> 5 clearly.<br/> 6 Q. And in your view was exhibit, Wolfe<br/> 7 <u>Exhibit 3</u>, an accurate depiction of the true<br/> 8 benefits of celecoxib?<br/> 9 MR. WEISS: Object to the form of<br/> 10 the question.<br/> 11 BY MR. SAHAM:<br/> 12 Q. I'll ask that -- I'll withdraw that<br/> 13 question. In your view, was Wolfe <u>Exhibit 3</u><br/> 14 misleading?<br/> 15 A. Wolfe <u>Exhibit 3</u> --<br/> 16 MR. WEISS: Object. Asked and<br/> 17 answered.<br/> 18 THE WITNESS: Excuse me?<br/> 19 MR. WEISS: You can go ahead and<br/> 20 answer the question.<br/> 21 BY MR. SAHAM:<br/> 22 Q. You can answer. He was just saying</p>                                                                                                                                                                                        | <p style="text-align: right;">92</p> <p>1 THE VIDEOGRAPHER: Back on the<br/> 2 record at 12:19 p.m.<br/> 3 EXAMINATION<br/> 4 BY MR. WEISS:<br/> 5 Q. Good afternoon, Dr. Juni.<br/> 6 A. Good afternoon.<br/> 7 Q. Why are you here today?<br/> 8 A. I'm here today because I was<br/> 9 contacted by the plaintiff's attorney by e-mail a<br/> 10 few weeks ago whether I would be ready to<br/> 11 stipulate or to give my testimony one says I<br/> 12 think, regarding this case.<br/> 13 Q. You understand that you have no<br/> 14 obligation to be here?<br/> 15 A. I understand that I have no<br/> 16 obligation, yes. I was here for a Congress in<br/> 17 Cardiology and I said, okay, that's fine, I do<br/> 18 it, yes.<br/> 19 Q. Okay. And why were you willing to<br/> 20 come here and give testimony?<br/> 21 A. Well, I, from my point of view was<br/> 22 that the case we're looking at here was</p> |

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| <p style="text-align: right;">93</p> <p>1 problematic and I heard, you know, the issues<br/> 2 brought up by the attorneys one says here,<br/> 3 whatever brought up what the debate was and for<br/> 4 me it was okay that I could contribute, you know,<br/> 5 to the discussion here and just give my<br/> 6 testimony.<br/> 7 Q. So you wanted to contribute to the<br/> 8 discussion is that what you're saying?<br/> 9 A. Well, after I was asked, I agreed on<br/> 10 it, yes. I didn't actively seek.<br/> 11 Q. Sure, I understand, but you were<br/> 12 anxious to come here and give your testimony<br/> 13 about your editorial.<br/> 14 MR. SAHAM: Objection to form.<br/> 15 THE WITNESS: No, I wasn't anxious.<br/> 16 But, from my point of view, it was okay just to<br/> 17 give it. This was just to share the experience<br/> 18 that we had at that time. I wasn't anxious, no.<br/> 19 BY MR. WEISS:<br/> 20 Q. But you were willing to take four or<br/> 21 five hours out of your day to come here and give<br/> 22 your testimony in a case which you have nothing</p> | <p style="text-align: right;">95</p> <p>1 Q. When was the first time that<br/> 2 somebody from the plaintiff's law firm contacted<br/> 3 you?<br/> 4 A. I think there was a first e-mail<br/> 5 several weeks ago that I didn't reply to if I<br/> 6 remember correctly. And then we had an e-mail<br/> 7 contact and after that one telephone call.<br/> 8 Q. And who did you speak to on the<br/> 9 telephone call that you referred to?<br/> 10 A. I assumed that -- yes, I'm sure<br/> 11 actually it was Scott Saham, who is sitting here.<br/> 12 Q. And during that phone call, what did<br/> 13 Mr. Saham -- I'm sorry, Sam, right?<br/> 14 MR. SAHAM: Yes, thank you.<br/> 15 BY MR. WEISS:<br/> 16 Q. I had some pronunciation issues.<br/> 17 What did he tell you about this case during the<br/> 18 course of that phone call?<br/> 19 A. He explained to me -- I need to be<br/> 20 careful now. I, you know, I couldn't say<br/> 21 verbatim what he said.<br/> 22 But he explained to me that this is</p>                                         |
| <p style="text-align: right;">94</p> <p>1 to do with?<br/> 2 MR. SAHAM: Objection to form.<br/> 3 THE WITNESS: Indeed I have nothing<br/> 4 to do with the case. It had to do with the<br/> 5 scientific issues here.<br/> 6 Since today is not particularly busy<br/> 7 at TCT for me personally, I don't have to chair<br/> 8 meetings or do anything else, it was okay.<br/> 9 I gave -- I gave your colleagues or<br/> 10 your opponents here just a time slot which would<br/> 11 be convenient and that they accepted it.<br/> 12 BY MR. WEISS:<br/> 13 Q. When did you first tell them about<br/> 14 the time slot that you would be available?<br/> 15 A. Oh, God, when was that. I would<br/> 16 need to look that up with my secretary. This was<br/> 17 about probably two to three weeks ago. It was<br/> 18 very short term, actually two weeks probably ago.<br/> 19 Q. Okay.<br/> 20 A. As I just indicated, okay, by the<br/> 21 way, after they contacted me, I will be in<br/> 22 Washington and then they organized it.</p>                                                  | <p style="text-align: right;">96</p> <p>1 about, you know, a lawsuit looking at whether,<br/> 2 you know, the presentation of the CLASS study in<br/> 3 this main publication, Wolfe <u>Exhibit 3</u>, actually<br/> 4 was misleading or not for individuals actually<br/> 5 who were involved in the decisions on, you know,<br/> 6 buying or selling stocks from a party that I<br/> 7 actually forgot again what this party was because<br/> 8 it's actually not important for me.<br/> 9 So there was this, this Alaska<br/> 10 whatever, it was, some, you know, this -- just<br/> 11 the plaintiffs.<br/> 12 Q. I understand. You said that you<br/> 13 needed to be careful about this in giving your<br/> 14 answer, what did you mean by that?<br/> 15 A. Because I don't exactly remember<br/> 16 what the wording was.<br/> 17 Q. Uh-huh. Did he tell you anything<br/> 18 else about why he wanted you to testify?<br/> 19 A. Well, he was referring to my<br/> 20 editorial --<br/> 21 Q. Uh-huh.<br/> 22 A. -- in the BMJ and he indicated that</p> |

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| <p style="text-align: right;">97</p> <p>1 this would be about testifying about the contents<br/>2 of the editorial and what led to the editorial.<br/>3 Q. Did you have a subsequent<br/>4 conversation with Mr. Saham about this<br/>5 deposition?<br/>6 A. We had this telephone call and<br/>7 yesterday in the evening we met in the hotel<br/>8 lobby for about 40 minutes or so, 45 minutes,<br/>9 where I was informed about, you know, the setup<br/>10 here, how this would work out.<br/>11 And that you would be present and<br/>12 what I would need to do, that I need to swear and<br/>13 so on, just all of that stuff.<br/>14 Q. Did he discuss your testimony with<br/>15 you?<br/>16 A. No.<br/>17 Q. Did he suggest to you any questions<br/>18 that he would ask you during the deposition?<br/>19 A. He was -- no, he didn't suggest any<br/>20 questions. But, we were perhaps for 10 minutes<br/>21 or so going through just the editorial, just to<br/>22 gather and look at these four major points.</p> | <p style="text-align: right;">99</p> <p>1 MR. SAHAM: I forgot. I forgot to<br/>2 mention that.<br/>3 THE WITNESS: I felt -- I felt very<br/>4 much, you know, something. I never did something<br/>5 like that before, and for me to appear, to see a<br/>6 bit, you know, to get the feel for the setting.<br/>7 BY MR. WEISS:<br/>8 Q. Did you at any time discuss with<br/>9 Mr. Saham or anyone at his firm whether or not<br/>10 you should have a lawyer to represent you?<br/>11 A. Yesterday -- yesterday that was also<br/>12 something that was being brought up that you<br/>13 might want to -- that you might actually ask<br/>14 that, whether I needed a representative or not.<br/>15 And I was -- I actively thought<br/>16 about that when we had the first discussion over<br/>17 the phone and I didn't feel that I needed<br/>18 somebody to represent me.<br/>19 Q. Okay. Are you being compensated in<br/>20 any way for giving testimony here today?<br/>21 A. No.<br/>22 Q. Have any of your travel expenses</p> |
| <p style="text-align: right;">98</p> <p>1 But there weren't any specific<br/>2 questions that he asked me at that time, no.<br/>3 Q. Uh-huh. Did he suggest to you any<br/>4 questions that you could anticipate that I would<br/>5 ask you?<br/>6 A. No.<br/>7 Q. No. Did he describe to you any<br/>8 subjects that I might inquire about?<br/>9 A. Subjects you might inquire about?<br/>10 Q. Yes.<br/>11 A. He said that you might look at my CV<br/>12 as well and look at the other papers, et cetera,<br/>13 that could well be that you bring up, you know,<br/>14 other topics than just the research here.<br/>15 Or he said that you might want to<br/>16 imply that I'm formally against pharmaceutical<br/>17 industry, et cetera. He said that.<br/>18 Q. Did he tell you I was a nice guy?<br/>19 A. Sorry?<br/>20 Q. Did he tell you I was a nice guy?<br/>21 A. He didn't tell me anything about<br/>22 your personality.</p>                                                                                   | <p style="text-align: right;">100</p> <p>1 been covered by the plaintiffs in this case?<br/>2 A. No.<br/>3 Q. Have any promises been made to you<br/>4 about compensation or any --<br/>5 A. No. I actively don't want that,<br/>6 because for such a minor issue I don't want to<br/>7 end up in conflicts of interest.<br/>8 I don't have any financial liaisons<br/>9 with the industry at all and why should I, for<br/>10 something like that, you know, have conflicts of<br/>11 interest.<br/>12 Q. Uh-huh.<br/>13 A. So I do that just for free, my free<br/>14 time.<br/>15 Q. Okay. Did you have any<br/>16 communications with your coauthors, Professor<br/>17 Dieppe or Ms. -- I'm sorry, I can't pronounce her<br/>18 last name?<br/>19 A. Dr. Rutjes.<br/>20 Q. Rutjes. Did you have any<br/>21 conversations with them about the fact that you<br/>22 were coming here to give testimony today?</p>                                                                                                                       |

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| <p style="text-align: right;">101</p> <p>1 A. I think, when I remember correctly,<br/>2 that it was Dr. Rutjes who was first contacted<br/>3 and then she discussed it with, just with Paul<br/>4 Dieppe and myself and it was decided, if<br/>5 anything, that I shall go forward, because I was<br/>6 the first author.<br/>7 Q. And did Ms. -- did Dr. Rutjes or<br/>8 Dr. Dieppe express to you any reservations about<br/>9 coming and giving testimony?<br/>10 A. No.<br/>11 Q. Did they -- were they not inclined<br/>12 to come and give testimony?<br/>13 A. Sorry?<br/>14 Q. Did they refuse to come and give<br/>15 testimony?<br/>16 A. No. They didn't actively refuse.<br/>17 This was a very relaxed discussion and I was<br/>18 actually just then following the agreement that I<br/>19 would, you know, enter into contact with the<br/>20 plaintiffs' attorneys and that's it. There<br/>21 wasn't any active --<br/>22 Q. Were you aware that the plaintiffs</p> | <p style="text-align: right;">103</p> <p>1 A. No.<br/>2 Q. Okay.<br/>3 A. I'm a clinical epidemiologist.<br/>4 Q. Okay. And then your training is --<br/>5 what training do you have in rheumatology?<br/>6 A. I had an -- well, I had three years<br/>7 of internal medicine and I was one and a half<br/>8 years of rheumatology in -- just in clinics in<br/>9 Switzerland.<br/>10 Q. Is that the equivalent of a<br/>11 residency?<br/>12 A. Yes, residency. And then I went to<br/>13 Bristol and was working again between clinical<br/>14 and academic rheumatology for another year.<br/>15 Q. Okay. Have you ever been a<br/>16 clinician, meaning have you had a practice where<br/>17 you treated patients?<br/>18 A. Well, I have worked in a practice<br/>19 treating patients, but I did never have my own<br/>20 practice.<br/>21 I had an accumulated -- let me see,<br/>22 three -- I have approximately an accumulated five</p>                                                                                                                                              |
| <p style="text-align: right;">102</p> <p>1 in this case made an application to the court in<br/>2 the United States to try, as part of a process,<br/>3 to compel Dr. Dieppe to be deposed in the United<br/>4 Kingdom?<br/>5 A. No. I wasn't. Compelling means<br/>6 that he was obligated to, no, I wasn't.<br/>7 Q. Have you ever been retained by any<br/>8 party as an expert witness in a litigation in the<br/>9 United States or anywhere else?<br/>10 A. No.<br/>11 Q. Have you ever been a party to a<br/>12 litigation before?<br/>13 A. A party to a litigation?<br/>14 Q. Yes. Have you been a plaintiff or a<br/>15 defendant in a lawsuit?<br/>16 A. No.<br/>17 Q. Have you ever been a witness in a<br/>18 lawsuit?<br/>19 A. No.<br/>20 Q. Now, in describing your experience,<br/>21 I understood you to say that essentially you're a<br/>22 rheumatologist; is that fair?</p>                                                                                    | <p style="text-align: right;">104</p> <p>1 years of a clinical experience and changed to an<br/>2 academic career in the early 2000s.<br/>3 Q. Okay. And where were you involved<br/>4 in clinical experience? Where did that happen<br/>5 when you treated patients?<br/>6 A. In first the District Hospital<br/>7 between Bern and Olten and then a city hospital<br/>8 in Bern, and then in Bristol within the framework<br/>9 of the clinical research with it, in several<br/>10 hospitals in the Bristol area, and then back at<br/>11 the Bern University Hospital.<br/>12 Q. Now, when you were engaging in this<br/>13 clinical practice, did you have a specialty?<br/>14 A. No.<br/>15 Q. And so what kind of patients did you<br/>16 see? What kind of problems did you treat?<br/>17 A. Well, my background was in internal<br/>18 medicine and rheumatology so when I was, you<br/>19 know, at the clinics that I was working in were<br/>20 dominating the patient spectrum.<br/>21 And so was also, you know, the<br/>22 situation when I was acting as a tenens one says,</p> |

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| <p style="text-align: right;">105</p> <p>1 probably, a tenens in a practice, this was then a<br/>2 practice in internal medicine.<br/>3 So the patients I saw were<br/>4 representing the spectrum of patients in internal<br/>5 medicine broad and in rheumatology it was, you<br/>6 know, a lot of patients with musculoskeletal pain<br/>7 or with inflammation.<br/>8 Q. Okay. Do you have any formal<br/>9 training in epidemiology?<br/>10 A. A formal training in epidemiology?<br/>11 Q. Did you do any course work in<br/>12 epidemiology?<br/>13 A. Course work. Well, I attended<br/>14 formal courses, yes, but I don't have a master's<br/>15 degree in epidemiology.<br/>16 I did -- I did -- my right to teach<br/>17 was in clinical epidemiology. And I got my full<br/>18 professorship now in clinical epidemiology that I<br/>19 will be attending first for -- starting 1st of<br/>20 November.<br/>21 Q. Okay. You said that you attended<br/>22 courses in epidemiology, at what stage of your</p> | <p style="text-align: right;">107</p> <p>1 it back.<br/>2 And call it that I've been working<br/>3 now for six years just in clinical research in<br/>4 cardiology.<br/>5 And I have been involved in<br/>6 teaching, et cetera, also as a teacher, et<br/>7 cetera, in there. And I was attending clinical<br/>8 research courses while also teaching in<br/>9 cardiologic research.<br/>10 Q. Okay. So you didn't do a residency<br/>11 in cardiology?<br/>12 A. No.<br/>13 Q. You didn't do a fellowship in<br/>14 cardiology?<br/>15 A. No.<br/>16 Q. And you didn't do a residency in<br/>17 gastroenterology?<br/>18 A. No.<br/>19 Q. And you didn't do a fellowship in<br/>20 gastroenterology?<br/>21 A. Correct.<br/>22 Q. Now, you talked in the past, I think</p>                                                                                                                                                                                                                      |
| <p style="text-align: right;">106</p> <p>1 professional career or education did you attend<br/>2 courses in epidemiology?<br/>3 A. Well, when I was -- during my time<br/>4 when I was at Bristol University as you can see<br/>5 on my CV.<br/>6 Q. You did formal course work in<br/>7 epidemiology at Bristol?<br/>8 A. Well, I attended just, you know,<br/>9 short courses as other people also do, but I<br/>10 never attended the full master's courses.<br/>11 Q. Okay. And then what about<br/>12 gastroenterology, do you have any training in<br/>13 gastroenterology?<br/>14 A. No.<br/>15 Q. Do you have any training in<br/>16 cardiology?<br/>17 A. Only scientific training. I'm not a<br/>18 trained cardiologist, no.<br/>19 Q. What is scientific training in<br/>20 cardiology, what does that mean?<br/>21 A. Well, I -- well, I take it back. So<br/>22 I probably I need to call it differently. I take</p>                                                                                        | <p style="text-align: right;">108</p> <p>1 you talked with Mr. Saham about industry<br/>2 independence, do you recall that?<br/>3 A. Yes.<br/>4 Q. Okay. What is the source of funding<br/>5 for the trials and the research that you do?<br/>6 A. That I do?<br/>7 Q. Yes.<br/>8 A. Most of the research that I'm<br/>9 involved with is funded by the Swiss National<br/>10 Science Foundation.<br/>11 And I'm involved in randomized<br/>12 control trials as an unpaid member of the<br/>13 steering group that our industry founded.<br/>14 And currently this involves a trial<br/>15 by Biosentis (ph.), a trial by Sentruds (ph.),<br/>16 that is still just at the beginning of patient<br/>17 recruitment.<br/>18 A trial by Johnson &amp; Johnson, they<br/>19 are -- well, they're not on the short CV, they're<br/>20 on my long CV, a trial by Johnson &amp; Johnson<br/>21 (inaudible) two. And what else, and that's it<br/>22 currently, and now just very recently, a trial</p> |



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| <p style="text-align: right;">109</p> <p>1 that is in the planning phase by Medtronics.<br/> 2 So I'm not accepting any money, et<br/> 3 cetera, and I stay unpaid there.<br/> 4 Q. So you're not accepting any money<br/> 5 personally, but the trials are funded by<br/> 6 industry?<br/> 7 A. The trials are funded by industry.<br/> 8 These are typically approval trials used for<br/> 9 medical device approval.<br/> 10 Q. And do you consider those to be<br/> 11 industry independent trials?<br/> 12 A. No.<br/> 13 Q. And you said that a majority of your<br/> 14 research is funded by the Swiss National Science<br/> 15 Foundation. What is the Swiss National Science<br/> 16 Foundation?<br/> 17 A. The Swiss National Science<br/> 18 Foundation is a governmental body that is funding<br/> 19 in clinical and basic research in Switzerland.<br/> 20 Q. And do you make -- in order to get<br/> 21 funding from them, do you have to make grant<br/> 22 proposals to the Swiss National Science</p>                                 | <p style="text-align: right;">111</p> <p>1 you've been involved with that received funding<br/> 2 from the Swiss Association of Health Insurers?<br/> 3 A. Let me just think. Yes, it's the<br/> 4 only trial.<br/> 5 Q. Have you been -- have you published<br/> 6 papers with coauthors who take money from the<br/> 7 industry?<br/> 8 A. Yes. Most likely.<br/> 9 Q. Do you have any reservations about<br/> 10 health insurance companies funding clinical<br/> 11 trials?<br/> 12 A. Yes, I do.<br/> 13 Q. And what are those reservations?<br/> 14 A. I think that we all have conflicts<br/> 15 of interests and the health insurers have as many<br/> 16 conflicts of interest in the ultimate direction<br/> 17 as a pharmaceutical company or a medical device<br/> 18 company has.<br/> 19 And I would very much like to have a<br/> 20 strong industry independent health services<br/> 21 research that also includes performance of large<br/> 22 randomized trials, fully independent, also</p> |
| <p style="text-align: right;">110</p> <p>1 Foundation?<br/> 2 A. Yes.<br/> 3 Q. And what about the Swiss Association<br/> 4 of Health Insurers, have you ever received<br/> 5 funding from the Swiss Association of Health<br/> 6 Insurers?<br/> 7 A. I have received funding from health<br/> 8 insurance companies directly through payments,<br/> 9 through compensation payments within the<br/> 10 framework of the randomized control trials.<br/> 11 We developed a new funding model at<br/> 12 that time and for each patient who was included<br/> 13 in the trial received just a fee to treat the<br/> 14 patient. Part of the fee was being forwarded to<br/> 15 the treating physician and part of the fee was<br/> 16 used to fund the randomized trial.<br/> 17 Q. And what trial was that?<br/> 18 A. This was a trial on<br/> 19 viscosupplementation agents. That's hyaluronic<br/> 20 acids or a multiplication of hyaluronic acids<br/> 21 being injected into osteoarthritic knees.<br/> 22 Q. And is that the only trial that</p> | <p style="text-align: right;">112</p> <p>1 meaning independent of the health insurers.<br/> 2 Q. And when you said that the insurance<br/> 3 companies have an incentive that's opposite of<br/> 4 the industry, what did you mean by that?<br/> 5 A. Well, I, you know, they're actually<br/> 6 the ones who pay --<br/> 7 Q. Uh-huh.<br/> 8 A. -- the health services. And, for<br/> 9 instance, they will have probably a natural<br/> 10 interest of prices of medical services of medical<br/> 11 interventions being not too high and that's also,<br/> 12 you know, that's the conflict of interest.<br/> 13 Q. Meaning somebody could argue that<br/> 14 they would be interested in discrediting more<br/> 15 expensive therapies, "they" being insurance<br/> 16 companies?<br/> 17 A. Somebody could argue, yes.<br/> 18 Q. And that would be the perceived<br/> 19 conflict of interest?<br/> 20 A. Correct.<br/> 21 Q. In 2002, what was your academic<br/> 22 position, if you had one?</p>       |



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| <p style="text-align: right;">113</p> <p>1 A. In 2002, I was a senior research<br/>2 fellow who -- well, it depends on what time this<br/>3 was. Let me see. I'm actually not sure I need<br/>4 to look into my CV.<br/>5 I just started a fellowship that I<br/>6 received from the Swiss National Science<br/>7 Foundation. Let me just quickly see when this<br/>8 was, January 2002 I started this.<br/>9 So this was a senior fellowship<br/>10 within the program of social and preventative<br/>11 medicine of the Swiss National Science<br/>12 Foundation.<br/>13 And I had within the framework of<br/>14 the senior fellowship, I had the position at the<br/>15 University of Bern in rheumatology and social and<br/>16 preventive medicine and at the University of<br/>17 Bristol.<br/>18 Q. And what were your responsibilities<br/>19 in that position?<br/>20 A. I had the research group in Bern and<br/>21 the research group in Bristol.<br/>22 Q. You said you had a research group,</p>                     | <p style="text-align: right;">115</p> <p>1 research including meta-analysis and<br/>2 methodological research for six years.<br/>3 . So, during my clinical time, I<br/>4 started with performing clinical research and<br/>5 methodological research in 1995.<br/>6 Q. Okay. So let me make sure I'm<br/>7 clear.<br/>8 I think you testified, and please<br/>9 correct me if I'm wrong, that as of roughly June<br/>10 of 2002, your involvement in designing the<br/>11 randomized control trials was that you were --<br/>12 you had been involved in designing two randomized<br/>13 control trials up to that point?<br/>14 A. Correct. Correct.<br/>15 Q. Okay. And what were those two<br/>16 trials?<br/>17 A. Well, one was -- one was the design<br/>18 of the viscosupplementation trial that we were<br/>19 talking about and the other one was a trial in<br/>20 alcohol addiction comparing acupuncture with sham<br/>21 acupuncture.<br/>22 Q. Approximately how many patients were</p> |
| <p style="text-align: right;">114</p> <p>1 meaning that you were overseeing research groups?<br/>2 A. I was overseeing these research<br/>3 groups.<br/>4 Q. Okay.<br/>5 A. Yes, I was the supervisor.<br/>6 Q. Okay. And did those research groups<br/>7 have a particular focus?<br/>8 A. Yes. This was a musculoskeletal<br/>9 health, osteoarthritis mainly. So we set up and<br/>10 follow-up of a cord study in Bristol at that<br/>11 time. And we set up a meta epidemiology study on<br/>12 bias in osteoarthritis research in Bern.<br/>13 Q. In 2002, at the time that you wrote<br/>14 the editorial to BMJ, which is Plaintiff's<br/>15 Exhibit 32, how much experience had you had in<br/>16 designing and administering clinical trials?<br/>17 A. I designed -- let me see, I should<br/>18 have my CV now just to be sure that this is the<br/>19 case.<br/>20 And designing, probably I designed<br/>21 two randomized controlled trials at that time.<br/>22 And I was involved in clinical epidemiological</p> | <p style="text-align: right;">116</p> <p>1 enrolled in the viscosupplementation trial?<br/>2 A. 660.<br/>3 Q. And how long did that trial last?<br/>4 A. In terms of the patient recruitment<br/>5 or overall?<br/>6 Q. Overall.<br/>7 A. I can't remember. I would need to<br/>8 look it up.<br/>9 Q. Okay. And the alcohol addiction<br/>10 study, how many patients were enrolled in that<br/>11 study?<br/>12 A. This was approximately 45 or 50<br/>13 patients. It was a pilot trial.<br/>14 Q. And could either of these trials be<br/>15 described as outcomes trials?<br/>16 A. I'm not sure what you mean with<br/>17 outcomes trials.<br/>18 Q. Well, is it a term of art that you<br/>19 use in your industry?<br/>20 A. We hardly ever use it. I get<br/>21 confused by the term, because I never understand<br/>22 what it is. These trials had clinical outcomes</p>                                                                                                                     |

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| <p style="text-align: right;">117</p> <p>1 patient-relevant outcomes. I'm not sure whether<br/>2 you want to describe them as outcome trials or<br/>3 not.<br/>4 Q. Okay. And what about, would you<br/>5 consider these safety trials?<br/>6 These weren't -- well, let me put it<br/>7 this way, the viscosupplementation study wasn't<br/>8 designed to assess the safety of the agents?<br/>9 A. Correct. This was an effectiveness<br/>10 trial.<br/>11 Q. Okay. And is that -- was the<br/>12 alcohol addiction trial also an effectiveness<br/>13 trial?<br/>14 A. Correct. Safety was the secondary<br/>15 end point.<br/>16 Q. And what was the<br/>17 viscosupplementation trial essentially designed<br/>18 to study?<br/>19 A. Sorry, I didn't understand the<br/>20 question.<br/>21 Q. What was the study designed to do?<br/>22 A. The study was designed to do -- to</p>                              | <p style="text-align: right;">119</p> <p>1 which is the JAMA article, in the list of authors<br/>2 there I'm going to take you down the list, Fred<br/>3 Silverstein, are you familiar with<br/>4 Dr. Silverstein?<br/>5 A. Personally you mean?<br/>6 Q. No, no. I mean, either personally<br/>7 or by reputation.<br/>8 A. No, no. You know, these lists, when<br/>9 I just look at the list here, I was faced with<br/>10 these authors because of this article.<br/>11 And I was never personally, as I was<br/>12 aware of or just in terms of looking into their<br/>13 CVs or so just confronted with them.<br/>14 Q. Excuse me. Sorry. So, just to be<br/>15 clear, the authors listed here were not people<br/>16 who you had encountered before in the course of<br/>17 your career?<br/>18 A. No.<br/>19 Q. Okay. And you didn't do any --<br/>20 A. I -- I need to qualify that.<br/>21 Q. Sure.<br/>22 A. Not I know consciously encountered.</p>                                                                                              |
| <p style="text-align: right;">118</p> <p>1 compare three active interventions and two<br/>2 regular hyaluronic acids with a chemical modified<br/>3 cross-linked hyaluronic acid.<br/>4 Q. And what were you testing with the<br/>5 acid?<br/>6 A. We were testing whether the<br/>7 chemically modified hyaluronic acid, the<br/>8 cross-linked hyaluronic acid, was superior to the<br/>9 comparators.<br/>10 Q. And in the alcohol addiction trial,<br/>11 what were you testing there?<br/>12 A. We were testing the two types of<br/>13 interventions, acupuncture interventions were<br/>14 superior to sham acupuncture intervention using<br/>15 laser.<br/>16 Q. Do you have any training in<br/>17 acupuncture?<br/>18 A. No.<br/>19 Q. Do you have any training in the<br/>20 treatment of alcohol addiction?<br/>21 A. No. I was the methodologist.<br/>22 Q. Pointing you to Wolfe <u>Exhibit 3</u>,</p> | <p style="text-align: right;">120</p> <p>1 So I don't know whether --<br/>2 Q. Fair enough. But you didn't do any<br/>3 research to try and determine what their<br/>4 background, experience was before you wrote the<br/>5 editorial?<br/>6 A. Nothing. Nothing.<br/>7 Q. Okay. Have you learned anything<br/>8 about these individuals subsequent to the time<br/>9 that you wrote the BMJ editorial?<br/>10 A. I'm just looking at the authors list<br/>11 and just trying to remember.<br/>12 I encountered some of the names like<br/>13 Simon and Pinkus just when looking at different<br/>14 randomized control trials so that they were<br/>15 involved in this.<br/>16 Q. Okay. Now, the word misleading was<br/>17 thrown around a lot during the course of your<br/>18 testimony and I want to know whether when you, in<br/>19 your BMJ article, when you suggested that the<br/>20 article was misleading, whether you intended to<br/>21 convey that you believed that the authors of the<br/>22 CLASS article had purposefully misled?</p> |

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| <p style="text-align: right;">121</p> <p>1 MR. SAHAM: Objection to form.</p> <p>2 THE WITNESS: I wasn't talking about</p> <p>3 the authors, I was talking about -- well, not I,</p> <p>4 you know, we. So me and my colleagues, you know,</p> <p>5 the three of us with, you know, Paul Dieppe</p> <p>6 having just incidentally a lot of experience in</p> <p>7 clinical trials, considerably more at that time</p> <p>8 than I had, and we were referring to the article</p> <p>9 and not to the people.</p> <p>10 BY MR. WEISS:</p> <p>11 Q. I understand. But, the people wrote</p> <p>12 the article, correct?</p> <p>13 A. That's frequently the case, not</p> <p>14 always. I wasn't -- I'm actually not sure about</p> <p>15 this article whether there were ghost writers</p> <p>16 involved or not, I don't know.</p> <p>17 Q. Uh-huh. Well, let me ask you it</p> <p>18 this way, whoever it was that wrote the article,</p> <p>19 was it your intention to suggest by writing the</p> <p>20 BMJ editorial that that person or those people</p> <p>21 purposefully intended to mislead either the</p> <p>22 investing public or clinicians?</p> | <p style="text-align: right;">123</p> <p>1 or not said, or did you mean that the people who</p> <p>2 wrote that article intended to mislead the</p> <p>3 readers of that article?</p> <p>4 MR. SAHAM: Objection to form.</p> <p>5 THE WITNESS: I meant the first.</p> <p>6 BY MR. WEISS:</p> <p>7 Q. Okay. So you weren't expressing any</p> <p>8 view as to whether or not the authors intended to</p> <p>9 deceive anybody or mislead anybody?</p> <p>10 A. No. Because I was not in a position</p> <p>11 to determine on that. I was in a position to</p> <p>12 determine what the paper says that's a scientific</p> <p>13 debate.</p> <p>14 Q. Fair enough. Now, this article</p> <p>15 ultimately, the BMJ editorial, ultimately</p> <p>16 represents nothing more than your and your</p> <p>17 coauthors' opinions, correct?</p> <p>18 MR. SAHAM: Objection to form.</p> <p>19 THE WITNESS: No. That's incorrect.</p> <p>20 It also represents data that were presented and</p> <p>21 analyzed on the FDA's website.</p> <p>22 BY MR. WEISS:</p> |
| <p style="text-align: right;">122</p> <p>1 A. Purposely intended to mislead. I</p> <p>2 just need a moment to digest that.</p> <p>3 Q. Take all of the time you need.</p> <p>4 A. May I ask a clarification of this?</p> <p>5 Q. Sure.</p> <p>6 A. Does this imply any -- well, I'm not</p> <p>7 sure what the term for this is.</p> <p>8 Does this imply any, you know,</p> <p>9 criminal intent or does it just imply, you know,</p> <p>10 any active intention to optimize results and to</p> <p>11 show results, you know, over-optimistic compared</p> <p>12 with what also could be existing.</p> <p>13 What does it imply your question?</p> <p>14 Q. Let me restate my question.</p> <p>15 A. Good.</p> <p>16 Q. My question is simply this. You</p> <p>17 wrote that you believed that the CLASS article</p> <p>18 was misleading.</p> <p>19 A. Correct.</p> <p>20 Q. Okay. When you said it was</p> <p>21 misleading, did you mean that well it happened to</p> <p>22 be misleading by virtue of things that were said</p>                                                                                                                       | <p style="text-align: right;">124</p> <p>1 Q. Okay. But it's your opinion of what</p> <p>2 that data reflects?</p> <p>3 A. Well, clearly it's an editorial,</p> <p>4 it's our opinion, yes.</p> <p>5 Q. So, when Mr. Saham asked you a</p> <p>6 number of questions about whether statements in</p> <p>7 this article were accurate and you answered yes,</p> <p>8 all you meant was that it's an accurate statement</p> <p>9 of your opinion?</p> <p>10 MR. SAHAM: Objection to form.</p> <p>11 BY MR. WEISS:</p> <p>12 Q. Correct?</p> <p>13 A. I'm not accustomed to that so I need</p> <p>14 to think again about your question.</p> <p>15 Q. If you would like, you can ask the</p> <p>16 court reporter to read the question back.</p> <p>17 A. Okay. That's good.</p> <p>18 MR. SAHAM: And are you referring --</p> <p>19 I mean, it's a compound question, are you</p> <p>20 referring to a particular question?</p> <p>21 THE WITNESS: Okay. So basically</p> <p>22 when I said that this is correct and this is</p>                           |

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| <p style="text-align: right;">125</p> <p>1 adequate in terms of these statements, this</p> <p>2 was -- that this is my opinion, but I believe</p> <p>3 that this is a fact, you know, so I would state</p> <p>4 this as a fact indeed.</p> <p>5 BY MR. WEISS:</p> <p>6 Q. Okay. A number of times throughout</p> <p>7 the course of your testimony you testified that</p> <p>8 certain things that were done by the JAMA authors</p> <p>9 were improper, inappropriate and scientifically</p> <p>10 not valid.</p> <p>11 Do you recall that testimony</p> <p>12 generally?</p> <p>13 A. Uh-huh. I recall actively the</p> <p>14 scientifically invalid statement, yes.</p> <p>15 Q. And when you say something is</p> <p>16 scientifically invalid, that's according to you,</p> <p>17 correct?</p> <p>18 A. This is in accordance with</p> <p>19 international-accepted guidelines including the</p> <p>20 consort statements.</p> <p>21 This is in accordance with good</p> <p>22 clinical practice guidelines and this is in</p> | <p style="text-align: right;">127</p> <p>1 standards in your methodologies in articles and</p> <p>2 journals?</p> <p>3 A. That's a good question. I need to</p> <p>4 think about that.</p> <p>5 Q. Okay.</p> <p>6 A. Whether I ever had, you know, in a</p> <p>7 correspondence section, somebody accusing me of</p> <p>8 that. I wouldn't be sure. I know that we always</p> <p>9 try to follow it.</p> <p>10 So we, you know, there are the</p> <p>11 different statements that are actually being --</p> <p>12 being used consort, starch, et cetera, just for</p> <p>13 the different kind of studies and we always try</p> <p>14 to follow that and that's just a part of our</p> <p>15 standard procedures.</p> <p>16 Q. And you try to follow it based on</p> <p>17 your interpretation and understanding of what</p> <p>18 those guidelines provide, correct?</p> <p>19 MR. SAHAM: Objection to form.</p> <p>20 Misstates prior testimony.</p> <p>21 THE WITNESS: Indeed what I, my</p> <p>22 colleagues and the editors and the peer reviewers</p>                                                    |
| <p style="text-align: right;">126</p> <p>1 accordance with my personal opinion.</p> <p>2 Q. Okay. And what good practice</p> <p>3 guidelines are you referring to?</p> <p>4 A. I said, the good clinical practice</p> <p>5 guidelines.</p> <p>6 Q. Yes.</p> <p>7 A. GCP, ICH.</p> <p>8 Q. Okay.</p> <p>9 A. And, you know, that refers also to,</p> <p>10 you know, to the Helsinki statement indicating</p> <p>11 that results have to be published, completely</p> <p>12 published.</p> <p>13 I'm referring to consort, which is</p> <p>14 the consolidated standards of reporting trial</p> <p>15 statements that has been adopted by the major</p> <p>16 journals, including JAMA.</p> <p>17 Q. Do you always follow internationally</p> <p>18 recognized standards when you publish documents</p> <p>19 or journals or articles in journals?</p> <p>20 A. Yes.</p> <p>21 Q. And have you ever been accused of</p> <p>22 not following internationally-recognized</p>                                                           | <p style="text-align: right;">128</p> <p>1 of the journals that is submitting the article</p> <p>2 understand by these guidelines.</p> <p>3 BY MR. WEISS:</p> <p>4 Q. Sure. And certainly somebody could</p> <p>5 have a different interpretation or understanding</p> <p>6 of what certain guidelines provide.</p> <p>7 A. To a certain extent, yes.</p> <p>8 Q. Okay. Now, you, in your testimony,</p> <p>9 a number of times you referenced or testified</p> <p>10 about what the protocols for the CLASS study</p> <p>11 provided, do you recall that?</p> <p>12 A. I stipulated that, based on the</p> <p>13 information we had, that was information provided</p> <p>14 by the reviewers of the medical and statistical</p> <p>15 reviewers and the reports that were provided on</p> <p>16 FDA's website, I concluded that indeed.</p> <p>17 Q. Okay. But you've never actually</p> <p>18 seen the protocols for the CLASS study, correct?</p> <p>19 A. At the time point of the editorial,</p> <p>20 no. I'm not sure about then subsequent, the</p> <p>21 subsequent process.</p> <p>22 Q. Right.</p> |

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| <p style="text-align: right;">129</p> <p>1 A. I couldn't be sure. I couldn't<br/>2 swear to that.</p> <p>3 Q. Fair enough. But, at the time you<br/>4 wrote the BMJ article and the time it was<br/>5 published, you hadn't seen the protocols for the<br/>6 CLASS study, correct?</p> <p>7 A. Correct. I only had seen the<br/>8 statements made by statistical and medical<br/>9 reviewers as we also reference it in this<br/>10 editorial.</p> <p>11 Q. Okay. So, in your testimony when<br/>12 you testified about what the protocol provides or<br/>13 what should have been done pursuant to the<br/>14 protocol, you were only testifying about that<br/>15 based on the information that was available in<br/>16 the FDA website, correct?</p> <p>17 MR. SAHAM: Objection to form.</p> <p>18 THE WITNESS: Correct. I was<br/>19 testifying based on the information on the<br/>20 website as I was pointing out. I was careful of<br/>21 pointing out indeed testimony.<br/>22 BY MR. WEISS:</p> | <p style="text-align: right;">131</p> <p>1 Q. Is that your own language there?<br/>2 Did you write that?</p> <p>3 A. Well, I don't know anymore. This is<br/>4 very much a teamwork. It could well be that I<br/>5 wrote it. I think my written English is pretty<br/>6 okay.</p> <p>7 Q. Uh-huh.</p> <p>8 A. And I couldn't be sure whether, you<br/>9 know, the final statement as it is here was<br/>10 written by me, by Anne Rutjes or Paul Dieppe.</p> <p>11 Q. Okay.</p> <p>12 A. That's why we're three authors of<br/>13 the paper.</p> <p>14 Q. I understand and this question you<br/>15 can understand when I ask it I'm asking -- when I<br/>16 say you in that regard, I mean you and your<br/>17 coauthors, but I'll try and be more clear.</p> <p>18 A. Okay. Yes.</p> <p>19 Q. Now, that language that I just read,<br/>20 "The protocols of these trials differed markedly<br/>21 from the published paper in design, outcomes,<br/>22 duration of follow up and analysis." Is that</p>                                                                                               |
| <p style="text-align: right;">130</p> <p>1 Q. Okay. Now, I want to take you to<br/>2 <u>Exhibit 3</u> -- I'm sorry, <u>Exhibit 32</u>, which is your<br/>3 BMJ editorial.</p> <p>4 A. Yes.</p> <p>5 Q. I'll ask you to pick that back up.<br/>6 Now who actually drafted this article, who did<br/>7 the physical labor in actually drafting the<br/>8 article?</p> <p>9 A. Mainly me.</p> <p>10 Q. Okay. And does everything, all of<br/>11 the language in this article, is that all of the<br/>12 original language from -- strike that question.<br/>13 It's a horrible question.</p> <p>14 Well, let's start with this: At the<br/>15 on the first page towards the bottom of the first<br/>16 column --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- you say "The protocols of these<br/>19 trials differ markedly from the published paper<br/>20 in design, outcomes, duration of follow up and<br/>21 analysis." Do you see that?<br/>22 A. Yes.</p>                                                     | <p style="text-align: right;">132</p> <p>1 language original language from you or your<br/>2 coauthors?</p> <p>3 A. I don't know. Either it is original<br/>4 language from me or my coauthors or it went<br/>5 through copy editing as is the case for BMJ,<br/>6 JAMA, Lancet, et cetera, sometimes quite<br/>7 aggressively and some changes could have been<br/>8 made.</p> <p>9 Q. Okay. And then I want to take you<br/>10 down to the next paragraph which begins -- the<br/>11 second sentence of the next paragraph which<br/>12 begins, quote, "The Food and Drug Administration<br/>13 was concerned that selective COX 2 inhibitors<br/>14 could interfere with the benefits of COX 2 in<br/>15 ulcer healing. This could lead to a long-term<br/>16 increase of ulcer related complications that<br/>17 occur without warning symptoms." Close quote.</p> <p>18 Is that language original language<br/>19 from either you or your coauthors?</p> <p>20 A. From either me or my coauthors,<br/>21 potentially adapted by BMJ's copy editors.<br/>22 Q. Okay. Now, before you wrote this</p> |

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| <p style="text-align: right;">133</p> <p>1 article, you had read the letters to the editor</p> <p>2 that were published in JAMA in November of 2001,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And, let me ask you now to --</p> <p>6 A. That's why I referred to them and it</p> <p>7 could well be, you know, that when we referred to</p> <p>8 them that we adopted the statements of these</p> <p>9 authors, that's why I referenced actually, that's</p> <p>10 possible.</p> <p>11 Q. Right. Okay. Well, in the first</p> <p>12 quote that I read you, "The protocols of these</p> <p>13 trials differed markedly from the published paper</p> <p>14 in design, outcomes, duration of follow up and</p> <p>15 analysis." There is no citation there, is there?</p> <p>16 A. Sorry?</p> <p>17 Q. There's no citation after that</p> <p>18 sentence.</p> <p>19 A. No.</p> <p>20 Q. Is it possible that you copied that</p> <p>21 language from somebody else?</p> <p>22 MR. SAHAM: Objection to form.</p> | <p style="text-align: right;">135</p> <p>1 Q. Okay.</p> <p>2 MR. WEISS: I'm going to ask that</p> <p>3 the court reporter mark this as <u>Exhibit 160</u> --</p> <p>4 MR. SAHAM: Don't mark on ours, just</p> <p>5 mark your own.</p> <p>6 MR. WEISS: I'm sorry. Then we will</p> <p>7 mark this as Defendants' exhibit -- has this</p> <p>8 already been marked, the Letters to the Editor of</p> <p>9 JAMA.</p> <p>10 MR. SAHAM: It may have been marked,</p> <p>11 I don't know.</p> <p>12 MR. WEISS: Let's mark it as</p> <p>13 Defendants' Exhibit, let's start at 50, just so</p> <p>14 we're -- well, let's just start at one. We will</p> <p>15 worry about harmonizing them later.</p> <p>16 (Defendants' <u>Exhibit Number 1</u></p> <p>17 marked for identification.)</p> <p>18 BY MR. WEISS:</p> <p>19 Q. Now, what I'm showing you what has</p> <p>20 just been marked as <u>Exhibit 1</u> are copies of the</p> <p>21 letters to the editor of JAMA which were</p> <p>22 published in the November 21, 2001 edition.</p>                                                                                          |
| <p style="text-align: right;">134</p> <p>1 THE WITNESS: Well, I cannot rule</p> <p>2 that out that this evidence came from somewhere.</p> <p>3 That's possible.</p> <p>4 BY MR. WEISS:</p> <p>5 Q. Uh-huh. Is it inappropriate for you</p> <p>6 to have copied language from somebody else</p> <p>7 without citing it?</p> <p>8 A. If we hadn't referred to this</p> <p>9 language and, you know, in the entire article, it</p> <p>10 would be inappropriate.</p> <p>11 Q. Uh-huh. But you didn't cite to</p> <p>12 somebody, you didn't cite to anybody else for</p> <p>13 that proposition, did you?</p> <p>14 A. Not this -- so there -- there's a</p> <p>15 citation lacking they come up just before and</p> <p>16 after that.</p> <p>17 Q. Uh-huh.</p> <p>18 A. So References 4 and 5 actually were</p> <p>19 just referring to the letters.</p> <p>20 Q. Okay.</p> <p>21 A. And Reference 3 was referring to The</p> <p>22 Washington Post article. So I wouldn't know.</p>                                          | <p style="text-align: right;">136</p> <p>1 And I'll ask you, Dr. Juni, looking</p> <p>2 back at your BMJ editorial and the third</p> <p>3 paragraph on the first page reads, "An article in</p> <p>4 The Washington Post in August 2001 and two</p> <p>5 letters published in JAMA in November 2001 drew</p> <p>6 attention to the fact that complete information</p> <p>7 available to the United States Food and Drug</p> <p>8 Administration contradicted those conclusions."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Are these letters that I've just</p> <p>12 handed you as Defendants' <u>Exhibit 1</u> the letters</p> <p>13 that you're referring to in the language that</p> <p>14 I've just read?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And then I will ask you to</p> <p>17 look at the first letter, which is the letter</p> <p>18 from Jennifer Berg Hrachovec and Mark Mora, and I</p> <p>19 will ask you to take a look on the first</p> <p>20 paragraph, one, two, I believe it's the third</p> <p>21 sentence which begins, "As described on the FDA</p> <p>22 website." Do you see that?</p> |



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| <p style="text-align: right;">137</p> <p>1 A. Uh-huh. Yep.</p> <p>2 Q. Okay. And it goes on to read, "As</p> <p>3 described on the FDA website, the published CLASS</p> <p>4 trial differs from the original protocol and</p> <p>5 primary outcome statistical analyses trial</p> <p>6 durations and conclusions." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And then I'll ask you to look</p> <p>9 back at your BMJ editorial to the language that I</p> <p>10 have pointed you to earlier, which reads "The</p> <p>11 protocols of these trials differed markedly from</p> <p>12 published paper and design outcomes, duration of</p> <p>13 follow up and analyses." That's almost identical</p> <p>14 language isn't it?</p> <p>15 A. It's not the same language. It</p> <p>16 states the facts and we refer to the two letters</p> <p>17 just several lines above.</p> <p>18 Q. Uh-huh.</p> <p>19 A. You're trying to imply something</p> <p>20 that I can't see.</p> <p>21 Q. All right. I'm not trying to imply</p> <p>22 anything. I'm just asking you where you got that</p> | <p style="text-align: right;">139</p> <p>1 design, outcomes, durations of follow-up and</p> <p>2 analyses." You didn't take that out of Jennifer</p> <p>3 Berg Hrachovec's letter, is that your testimony?</p> <p>4 A. No. I'm saying that's the content</p> <p>5 that we were referring to was from Washington</p> <p>6 Post and the two JAMA letters and that's actually</p> <p>7 what we then start to summarize and we do that</p> <p>8 scientifically within this editorial.</p> <p>9 Q. Okay. I'll then point you to the</p> <p>10 next paragraph of the BMJ editorial and it is the</p> <p>11 second sentence and it reads quote, "The Food and</p> <p>12 Drug Administration was concerned that selective</p> <p>13 COX 2 inhibitors could interfere with the</p> <p>14 benefits of COX 2 in ulcer healing. This could</p> <p>15 lead to a long-term increase of ulcer related</p> <p>16 complications that occur without warning</p> <p>17 symptoms." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And then I'll ask you to turn</p> <p>20 back to Defendants' Exhibit 1, and I'll ask you</p> <p>21 to look at the second paragraph in the first</p> <p>22 column, which says, quote "Scientists at the FDA</p> |
| <p style="text-align: right;">138</p> <p>1 language from?</p> <p>2 A. Okay. Well, again, you know, if,</p> <p>3 you know, if you talk about a BMW you need to</p> <p>4 call it BMW.</p> <p>5 There were some constructs included</p> <p>6 in there. We were clear in just indicating our</p> <p>7 sources that was The Washington Post article and</p> <p>8 the two letters in JAMA, and then we were</p> <p>9 referring to the facts, and that's what we did.</p> <p>10 That is also what Jennifer Berg</p> <p>11 Hrachovec and colleagues did and that's fair</p> <p>12 enough.</p> <p>13 Q. Okay. So you -- that language you</p> <p>14 are -- the language in here, "the protocols of</p> <p>15 these trials differed markedly from published</p> <p>16 paper in design, outcomes, duration of follow up</p> <p>17 and analysis."</p> <p>18 THE REPORTER: I'm sorry --</p> <p>19 BY MR. WEISS:</p> <p>20 Q. I'm sorry. I'm talking about the</p> <p>21 BMJ editorial, "The protocols of these trials</p> <p>22 differed markedly from the published paper in</p>                           | <p style="text-align: right;">140</p> <p>1 were concerned that Cox 2 inhibition would</p> <p>2 interfere with the beneficial role of COX 2 in</p> <p>3 the final stages of ulcer healing and actually</p> <p>4 increase the number of complicated ulcers that</p> <p>5 occur without symptomatic warnings." Do you see</p> <p>6 that?</p> <p>7 A. I haven't looked at it, but I</p> <p>8 believe you when you read it. That's fine.</p> <p>9 Q. And do you agree with me that that</p> <p>10 language that appears in Jennifer Berg's letter</p> <p>11 is substantially similar to the language that</p> <p>12 appears in the BMJ editorial that you wrote?</p> <p>13 A. Well, again, we're stipulating the</p> <p>14 facts that are referring to her letter. I assume</p> <p>15 that the Reference 4 is Berg Hrachovec, and it's</p> <p>16 just okay as it was indicated here.</p> <p>17 That's a different language. It's</p> <p>18 the same facts, and that's just fair enough and</p> <p>19 we refer to it.</p> <p>20 Q. You didn't quote -- you didn't use</p> <p>21 quotes in the language that you used?</p> <p>22 A. No, sorry. It's not a quote. It's</p>                                                                 |



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| <p style="text-align: right;">141</p> <p>1 not a quote.</p> <p>2 Q. Uh-huh.</p> <p>3 A. And that's the way many of us,</p> <p>4 probably all of us actually deal with just, you</p> <p>5 know, the papers of others. We refer to them.</p> <p>6 We do it correctly and we don't use the -- the</p> <p>7 language 1:1 as it is in there, and this is about</p> <p>8 the content of the letters, and we credit them,</p> <p>9 which is fair enough.</p> <p>10 Q. Do you believe that in the BMJ</p> <p>11 editorial you reached any conclusions or said</p> <p>12 anything that had not already been said by</p> <p>13 others?</p> <p>14 MR. SAHAM: Objection to form.</p> <p>15 THE WITNESS: I don't know. I would</p> <p>16 need to -- I don't remember how it was. I would</p> <p>17 need to look at --</p> <p>18 BY MR. WEISS:</p> <p>19 Q. Uh-huh. Well, let me point you to</p> <p>20 somebody specific. You say in your editorial,</p> <p>21 and I'm on the second page now of Defendants</p> <p>22 <u>Exhibit 32</u> --</p>                                                                                            | <p style="text-align: right;">143</p> <p>1 A. And this is not primary research.</p> <p>2 We didn't generate additional data.</p> <p>3 Q. Uh-huh.</p> <p>4 A. And we were actually open about</p> <p>5 that.</p> <p>6 Q. You didn't generate original data,</p> <p>7 is that what you said?</p> <p>8 A. For this one.</p> <p>9 Q. Okay.</p> <p>10 A. For this one, we did -- how could we</p> <p>11 generate original data if we had randomized</p> <p>12 patients.</p> <p>13 Q. Uh-huh. Okay.</p> <p>14 (Defendants' <u>Exhibit Number 2</u></p> <p>15 marked for identification.)</p> <p>16 BY MR. WEISS:</p> <p>17 Q. I'm going to hand you the</p> <p>18 "Statistical Reviewer Briefing Document for the</p> <p>19 Advisory Committee," which I'll ask the reporter</p> <p>20 to mark as Defendants' <u>Exhibit 2</u>.</p> <p>21 And I'm going to ask you to turn to</p> <p>22 Page 9 of that, of Defendants' <u>Exhibit 2</u>, and I'm</p>                                                                                                                                                  |
| <p style="text-align: right;">142</p> <p>1 A. Yes.</p> <p>2 Q. -- and I'm in the first column about</p> <p>3 halfway down and there's a sentence which begins,</p> <p>4 quote, "However, the absolute number of dropouts</p> <p>5 and withdrawals, both overall and due to</p> <p>6 gastrointestinal adverse events, increased</p> <p>7 gradually without any sudden increase after six</p> <p>8 months and withdrawal rates stayed roughly</p> <p>9 constant in different treatment groups during the</p> <p>10 entire follow-up period," close quote.</p> <p>11 Was that a conclusion that you and</p> <p>12 your colleagues reached independently?</p> <p>13 A. No. This was again based on the</p> <p>14 statistical and medical reviewer's comments</p> <p>15 published on the FDA's website, as again pointed</p> <p>16 out in the editorial.</p> <p>17 Q. Uh-huh. So basically all you were</p> <p>18 doing was restating what she had already stated?</p> <p>19 A. Of course, that's what we actually</p> <p>20 indicate. This is a summary of the facts in a</p> <p>21 more prominent way.</p> <p>22 Q. Uh-huh.</p> | <p style="text-align: right;">144</p> <p>1 going to ask you to take a look at the top of the</p> <p>2 page. There's a sentence that begins, quote, "As</p> <p>3 presented in Table 11, the dropout rates due to</p> <p>4 GIAE were increased gradually without sudden</p> <p>5 increase at Month 6 (Week 26) in any of the</p> <p>6 treatment groups.</p> <p>7 "The numerical order of the dropout</p> <p>8 rates stayed the same across the entire study</p> <p>9 period." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that's basically just cribbed</p> <p>12 right, your statement and your article that I</p> <p>13 read earlier is basically just a carbon copy of</p> <p>14 that statement, correct?</p> <p>15 MR. SAHAM: Objection to form.</p> <p>16 THE WITNESS: Let me quickly see</p> <p>17 where you are.</p> <p>18 BY MR. WEISS:</p> <p>19 Q. I'm looking at the BMJ editorial,</p> <p>20 the second page about halfway down, the sentence</p> <p>21 beginning, "However," as compared with Page 9 of</p> <p>22 Defendants' <u>Exhibit 2</u>, the sentence that begins</p> |

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| <p>145</p> <p>1 "As presented in Table 11," at the top.</p> <p>2 A. Well, no. It's not basically a</p> <p>3 carbon copy and again we reference to it,</p> <p>4 References 7 and 8, which is Lu and Witter.</p> <p>5 Q. Uh-huh. Okay. Is there a reference</p> <p>6 after the sentence that ends, "Withdrawal rate</p> <p>7 stayed roughly constant in different treatment</p> <p>8 groups during the entire follow-up period"?</p> <p>9 A. It's at the end of the paragraph.</p> <p>10 If we put after every single sentence a reference</p> <p>11 like that, we were rather in trouble with the</p> <p>12 copy editors.</p> <p>13 Q. Uh-huh. And then when you made that</p> <p>14 reference, you didn't actually make a page</p> <p>15 reference to the Lu review, did you?</p> <p>16 A. No. We referred to them as a entire</p> <p>17 document, Reference 7 and 8, without a page</p> <p>18 reference. You may have noticed that you have a</p> <p>19 limitation in number of references in editorials.</p> <p>20 Q. Okay. So you still contend, though,</p> <p>21 that that's your own original analysis?</p> <p>22 MR. SAHAM: Objection to form.</p> | <p>147</p> <p>1 A. Correct.</p> <p>2 Q. And looking at your editorial,</p> <p>3 Defendants' <u>Exhibit 32</u>, in the -- towards the</p> <p>4 bottom of the second page, there's a sentence and</p> <p>5 I read, quote, "For example, most of 58</p> <p>6 physicians attending an osteoarthritis workshop</p> <p>7 in Bern, Switzerland in December of 2001 had not</p> <p>8 realized that CLASS was seriously biased." Close</p> <p>9 quote. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that is what you're referring to</p> <p>12 when you talk about the workshop that you gave</p> <p>13 that gave rise to this concern?</p> <p>14 A. Correct.</p> <p>15 Q. And that's what led you to draft</p> <p>16 this article?</p> <p>17 A. Correct.</p> <p>18 Q. And, of those 58 physicians that</p> <p>19 were attending the workshop, how many of them</p> <p>20 expressed to you that they hadn't realized that</p> <p>21 CLASS was, quote, "seriously biased," close</p> <p>22 quote?</p>                          |
| <p>146</p> <p>1 THE WITNESS: Again, I never</p> <p>2 contended that. I indicated that this is based</p> <p>3 on the material provided on the FDA website and</p> <p>4 on the material provided by Wolfe <u>Exhibit 3</u></p> <p>5 originally. We summarized this and we referenced</p> <p>6 it appropriately.</p> <p>7 BY MR. WEISS:</p> <p>8 Q. So you're here to tell us that you</p> <p>9 basically just regurgitated what the FDA</p> <p>10 reviewers said on their website in their reviews,</p> <p>11 correct?</p> <p>12 MR. SAHAM: Objection to form.</p> <p>13 THE WITNESS: I'm here to tell you</p> <p>14 that we summarized, based on a concern that we</p> <p>15 had that the information was not adequately</p> <p>16 distributed, what was readily available on the</p> <p>17 FDA website, correct.</p> <p>18 BY MR. WEISS:</p> <p>19 Q. And this concern that you had, I</p> <p>20 think you testified that it grew out of a</p> <p>21 presentation that you made to certain clinicians</p> <p>22 in Switzerland; is that fair?</p>                                                                                                         | <p>148</p> <p>1 A. I had them raise their hands who</p> <p>2 didn't know about that and apart from, I wouldn't</p> <p>3 know anymore, apart from four or five, and that's</p> <p>4 just I didn't do anything that I wouldn't</p> <p>5 actively know whether they knew about the point</p> <p>6 here, the others just didn't know anything about</p> <p>7 that.</p> <p>8 So the majority, the point of, you</p> <p>9 know, the majority here is correctly stated.</p> <p>10 Q. So it's a majority of 58 people,</p> <p>11 that's what you're testifying to?</p> <p>12 A. Yes. Indeed.</p> <p>13 Q. Okay. And that's what led you to</p> <p>14 conclude that, quote, "Most still believe the</p> <p>15 findings published originally." Close quote?</p> <p>16 MR. SAHAM: Objection to the form.</p> <p>17 THE WITNESS: Where are you?</p> <p>18 BY MR. WEISS:</p> <p>19 Q. Which is the sentence that appears</p> <p>20 right above that.</p> <p>21 A. Sorry, I'm lost. You just need to</p> <p>22 tell me where that is.</p> |

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| <p style="text-align: right;">149</p> <p>1 Q. On Page 2, right above the sentence<br/>2 that begins "for example" there's a sentence that<br/>3 says "In our experience most still believe the<br/>4 findings published originally."<br/>5 A. In our experience, so that's<br/>6 experience of me and my colleagues. At this<br/>7 workshop of 58 people, this was one of my<br/>8 experience, not the only one.<br/>9 We then discussed it in the clinical<br/>10 setting and especially my colleague, Paul Dieppe,<br/>11 had, you know, many contacts with clinical<br/>12 colleagues during that time.<br/>13 It was in our experience that that<br/>14 is subjective and we stipulated that it is<br/>15 subjective.<br/>16 Q. Do you think 58 people is a<br/>17 statistically significant sample?<br/>18 A. That's the wrong question. You<br/>19 can't talk about statistical significance<br/>20 samples.<br/>21 Q. Okay. Do you think it's an adequate<br/>22 sample size, to draw a conclusion about the</p>                                                           | <p style="text-align: right;">151</p> <p>1 Q. Uh-huh. But that's one of the bases<br/>2 for your conclusions, is it not, that in your<br/>3 experience most still believe the findings<br/>4 published originally; is it not?<br/>5 A. No.<br/>6 Q. You don't list --<br/>7 A. This was an example and in our<br/>8 experience, when we talked to colleagues during<br/>9 workshops, et cetera, that the clinical<br/>10 colleagues weren't aware of anything else than<br/>11 the CLASS study.<br/>12 Q. But you don't list any other<br/>13 examples in here?<br/>14 A. No, we don't. As you can see.<br/>15 Q. Okay. And you referred to other<br/>16 workshops that you gave as other examples, what<br/>17 other workshops are you referring to?<br/>18 A. Sorry? Where do I refer to other<br/>19 workshops?<br/>20 Q. In your --<br/>21 A. I was saying that Paul Dieppe at<br/>22 that time was, you know, had many interfacing</p>                                                                                                                                                      |
| <p style="text-align: right;">150</p> <p>1 extent of the people who either know or don't<br/>2 know about the full CLASS results?<br/>3 A. The sample size is actually pretty<br/>4 okay. If you think about, perhaps, five or six<br/>5 people not answering -- well, we are not aware,<br/>6 it could calculate the confidence interval around<br/>7 that will exclude zero so the sample size is<br/>8 okay.<br/>9 The sample is a graph sample and the<br/>10 sampling, per se, is not a sample that would<br/>11 correspond, you know, to our epidemiological<br/>12 sampling strategies.<br/>13 Q. Uh-huh.<br/>14 A. And, again, this is an example, we<br/>15 gave it. Let me quickly see what we said, we<br/>16 said -- I'm lost again, where was it?<br/>17 Q. It's on the bottom of Page 2.<br/>18 A. On the bottom of Page 2. "For<br/>19 example, most of 58 physicians," we gave it as an<br/>20 example and we didn't imply here that this has,<br/>21 you know, a ultimate scientific validity. This<br/>22 is an example as part of the discussion at issue.</p> | <p style="text-align: right;">152</p> <p>1 activities with clinical colleagues, discussed<br/>2 these issues as well.<br/>3 We did it, you know, also at Bristol<br/>4 University. We continuously we're talking about,<br/>5 these are our experiences talking to clinical<br/>6 colleagues, talking about that and people were<br/>7 not aware of this.<br/>8 Q. How many clinical colleagues did you<br/>9 talk to at Bristol University?<br/>10 A. I don't know. So there, I think we<br/>11 would, the cumulative experience that we have, I<br/>12 don't know. I talked perhaps to 20, 25 or so<br/>13 during another workshop. I don't know when it<br/>14 was. I'm not sure how many Paul Dieppe had.<br/>15 Q. Uh-huh. And of those 20 or 25 at<br/>16 this other workshop that you referred to, how<br/>17 many of those people indicated that they weren't<br/>18 aware of the information published on the FDA<br/>19 website?<br/>20 A. I can't tell you how many indicates<br/>21 they had weren't aware, but I'm totally sure that<br/>22 nobody indicated that he was aware.</p> |

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| <p style="text-align: right;">153</p> <p>1 Q. Uh-huh.</p> <p>2 A. So people were surprised, totally</p> <p>3 surprised, and were indicating in general, but we</p> <p>4 didn't count, et cetera, that they were not aware</p> <p>5 of these issues.</p> <p>6 Q. Okay. Now you say here quote,</p> <p>7 "That, for example, most of 58 physicians</p> <p>8 attending an osteoarthritis workshop in Bern,</p> <p>9 Switzerland had not realized that CLASS was</p> <p>10 seriously biased," close quote.</p> <p>11 When you say they hadn't realized it</p> <p>12 was seriously biased, that's your interpretation</p> <p>13 of what they either realized or did not realize,</p> <p>14 correct?</p> <p>15 MR. SAHAM: Objection to form.</p> <p>16 BY MR. WEISS:</p> <p>17 Q. Let me ask it this way, didn't you</p> <p>18 really mean to say that they hadn't realized that</p> <p>19 there was more data available on the FDA website</p> <p>20 about CLASS?</p> <p>21 MR. SAHAM: Objection to form.</p> <p>22 THE WITNESS: I just need to think,</p>                                                                                                                                           | <p style="text-align: right;">155</p> <p>1 aware, correct?</p> <p>2 A. And I asked who was aware -- well,</p> <p>3 actually, who actually was just knowing the CLASS</p> <p>4 study, but, you know, was not aware of anything</p> <p>5 of that that I presented in terms of a</p> <p>6 discrepancy between the protocol and the CLASS</p> <p>7 study as published, and that is when people</p> <p>8 raised their hands.</p> <p>9 Q. But, by raising their hands, those</p> <p>10 people were indicating that they agreed that the</p> <p>11 CLASS was, quote, "seriously biased," close</p> <p>12 quote?</p> <p>13 A. I didn't use this phrasing and</p> <p>14 therefore they weren't indicating that they</p> <p>15 agreed on the term seriously biased.</p> <p>16 Q. Okay. So what you say here in your</p> <p>17 editorial is really not accurate is it?</p> <p>18 That these -- that most of these 58</p> <p>19 individuals had not realized that CLASS was</p> <p>20 seriously biased, that's not what they told you,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> |
| <p style="text-align: right;">154</p> <p>1 sorry, what I meant by that. And I could have,</p> <p>2 or we could have put it neutrally that there were</p> <p>3 serious discrepancies between the material</p> <p>4 available on the FDA website and what is in here.</p> <p>5 The form of the editorial means that</p> <p>6 there is not a formal results section and that</p> <p>7 indeed statements like that which are an</p> <p>8 interpretation will not be explicitly put into a</p> <p>9 discussion in a clinical conclusions section</p> <p>10 where they would be put in an original article.</p> <p>11 BY MR. WEISS:</p> <p>12 Q. Did any of the 58 physicians</p> <p>13 attending this osteoarthritis workshop tell you</p> <p>14 that they agreed with you that the results of</p> <p>15 CLASS were, quote, "seriously biased," close</p> <p>16 quote?</p> <p>17 A. I can't remember that. I just can't</p> <p>18 remember it. It is too long ago.</p> <p>19 Q. But your testimony is that you asked</p> <p>20 them whether they were aware that there was more</p> <p>21 data on the website and a number of them raised</p> <p>22 their hands indicating that they were not so</p> | <p style="text-align: right;">156</p> <p>1 MR. SAHAM: Objection to form.</p> <p>2 BY MR. WEISS:</p> <p>3 Q. Okay. Now, going back --</p> <p>4 MR. WEISS: Actually, you know what,</p> <p>5 let's change the tape. We have a couple of</p> <p>6 minutes to go.</p> <p>7 THE VIDEOGRAPHER: Off the record at</p> <p>8 1:18 p.m.</p> <p>9 (Recess -- 1:18-1:23 p.m.)</p> <p>10 THE VIDEOGRAPHER: This is the</p> <p>11 beginning of Tape Number 3. Back on the record</p> <p>12 at 1:23 p.m.</p> <p>13 BY MR. WEISS:</p> <p>14 Q. Now, Dr. Juni, one of your</p> <p>15 criticisms of the JAMA article was that the</p> <p>16 authors didn't follow what you understood to be</p> <p>17 the prespecified statistical analysis plan set</p> <p>18 forth in the protocol; is that correct?</p> <p>19 A. Yes. And very transparent about it.</p> <p>20 Q. Okay. And I think you acknowledged</p> <p>21 before that the protocols for the two trials, the</p> <p>22 035 and the 102 trial prespecified that they</p>                                                                   |

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| <p>157</p> <p>1 would be pooled for analysis; is that correct?</p> <p>2 A. As a first step, yes, but not as the</p> <p>3 ultimate step.</p> <p>4 Q. Uh-huh. And so in terms -- when</p> <p>5 they went ahead and pooled the comparator groups</p> <p>6 or the trials for comparison, that was according</p> <p>7 to protocol?</p> <p>8 A. That was according to the first step</p> <p>9 of the protocol, provided that they had used the</p> <p>10 entire follow-up duration, which they didn't.</p> <p>11 Q. And where does it specify in the</p> <p>12 protocol that they were required to have used the</p> <p>13 entire follow-up duration?</p> <p>14 A. Again, I haven't seen the protocol.</p> <p>15 I can just follow the FDA reviewer's discussion</p> <p>16 and the power calculation was based on a, an</p> <p>17 accumulated number of ulcer complications of 45</p> <p>18 across the two protocols of twice 20 -- on</p> <p>19 either -- and on both protocols, each 20 that</p> <p>20 would have accumulated that's how the FDA</p> <p>21 reviewers describe it.</p> <p>22 Q. Uh-huh.</p> | <p>159</p> <p>1 University of Bern. Professor Christian Glout</p> <p>2 (ph.), University of Copenhagen.</p> <p>3 Let's see, you want names where I</p> <p>4 really discussed this. Dr. Paul Creamer,</p> <p>5 University of Bristol. Let me see who else would</p> <p>6 you -- do you have time because I need to think a</p> <p>7 bit who I discussed that with.</p> <p>8 Q. Okay. Well, let's just start with</p> <p>9 the few that you've mentioned so far. You</p> <p>10 discussed with them the issues that you raise in</p> <p>11 your editorial before publishing it?</p> <p>12 A. No. I didn't specify that. I said</p> <p>13 that my -- I discussed it after or before, I</p> <p>14 don't know that anymore, this with them and, you</p> <p>15 know, after having published it or before having</p> <p>16 published it, but not at the time of the</p> <p>17 editorial.</p> <p>18 I wouldn't be sure with whom I</p> <p>19 discussed it before and with whom after.</p> <p>20 Q. Uh-huh. And they agreed with you,</p> <p>21 with your interpretation of the data?</p> <p>22 A. They agreed with my interpretation</p> |
| <p>158</p> <p>1 A. Taking this into account and taking</p> <p>2 into account how the power calculation was set</p> <p>3 up, it is totally clear that the entire follow-up</p> <p>4 duration should have been reported.</p> <p>5 Q. It is entirely clear to you that the</p> <p>6 entire follow-up duration should have been</p> <p>7 reported. Is that your testimony?</p> <p>8 MR. SAHAM: Objection to form.</p> <p>9 THE WITNESS: It's entirely clear to</p> <p>10 me and to many of my colleagues, many of them</p> <p>11 with, you know, international reputations, that</p> <p>12 this should have been the case.</p> <p>13 BY MR. WEISS:</p> <p>14 Q. Uh-huh. What other colleagues are</p> <p>15 you referring to?</p> <p>16 A. By names you mean -- by names, okay.</p> <p>17 Q. If you want to describe them to me,</p> <p>18 you can go ahead physically.</p> <p>19 A. This was an inappropriate statement</p> <p>20 of yours, just the last one.</p> <p>21 Q. Oh, excuse me.</p> <p>22 A. So Professor Multio Secker (ph.),</p>                                                             | <p>160</p> <p>1 of the discrepancies.</p> <p>2 Q. Okay.</p> <p>3 A. With our interpretation of the</p> <p>4 discrepancies.</p> <p>5 Q. Okay. Now, am I correct that you</p> <p>6 were not present at the time that the authors of</p> <p>7 the CLASS trial unblinded the data from the CLASS</p> <p>8 study?</p> <p>9 A. You're correct in that, yes.</p> <p>10 Q. And am I correct that you were not a</p> <p>11 participant in any of the discussions that the</p> <p>12 authors of the CLASS paper had regarding what</p> <p>13 data set to publish?</p> <p>14 A. Correct.</p> <p>15 Q. And am I correct that you are not</p> <p>16 aware of any of the analyses that the authors of</p> <p>17 the CLASS study had done prior to making a</p> <p>18 decision to publish the JAMA article?</p> <p>19 A. I need to think about this last</p> <p>20 statement. I think I am aware of some of the</p> <p>21 analysis that I described as a justification for</p> <p>22 their decision.</p>                                                                                                                                       |

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| <p style="text-align: right;">161</p> <p>1 But I'm not aware of all of their</p> <p>2 analyses. How could I be?</p> <p>3 Q. Fair enough. And have you ever had</p> <p>4 a conversation with any of the authors of the</p> <p>5 CLASS study about their decision to publish six</p> <p>6 months of data?</p> <p>7 A. As we already have figured out,</p> <p>8 because I don't know any of the authors</p> <p>9 personally, I couldn't have had a discussion with</p> <p>10 them.</p> <p>11 Q. Have you ever had any discussions</p> <p>12 with any representatives of Pfizer or Pharmacia</p> <p>13 or Searle regarding the JAMA article?</p> <p>14 A. I personally or members of my group?</p> <p>15 Q. Let's start with you personally.</p> <p>16 A. Me personally, no.</p> <p>17 Q. Okay.</p> <p>18 A. Not that I was aware of. I couldn't</p> <p>19 rule out that members of my group, including</p> <p>20 Stefan Reisenbach (ph.) and Sven Treller (ph.)</p> <p>21 did have some discussions, but I'm not sure about</p> <p>22 that.</p>           | <p style="text-align: right;">163</p> <p>1 addition, there was no robust evidence that</p> <p>2 gastrointestinal adverse events were actually a</p> <p>3 risk factor for ulcer related complications."</p> <p>4 Close quote. Do you see that?</p> <p>5 A. Let me see, no, I can't see it.</p> <p>6 First page?</p> <p>7 Q. Second page.</p> <p>8 A. Sorry, second page.</p> <p>9 Q. Second page, first column.</p> <p>10 A. Okay.</p> <p>11 Q. And it is about halfway down the</p> <p>12 page, or halfway down the column.</p> <p>13 A. "In addition, there was no robust</p> <p>14 evidence that gastrointestinal adverse events</p> <p>15 were actually a risk factor for ulcer related</p> <p>16 complications.</p> <p>17 Q. Right. And what was the basis for</p> <p>18 that statement?</p> <p>19 A. Well, here we refer to the reports</p> <p>20 of the FDA so we would need to look at these.</p> <p>21 Q. Uh-huh.</p> <p>22 A. In addition, what we did that</p>                                                                                                                                                                                                               |
| <p style="text-align: right;">162</p> <p>1 Q. Why do you think they may have had</p> <p>2 some discussions?</p> <p>3 A. Because they had contact with Pfizer</p> <p>4 regarding published and unpublished data of the</p> <p>5 celecoxib trials.</p> <p>6 Q. Who did they contact at Pfizer?</p> <p>7 A. I don't know.</p> <p>8 Q. And at what point did they have this</p> <p>9 contact?</p> <p>10 A. I would say this must be -- I'm not</p> <p>11 sure about that. I would estimate this must have</p> <p>12 been three to four years ago.</p> <p>13 Q. So it would have been after the</p> <p>14 editorial?</p> <p>15 A. Yes. Yes. Yes, of course. After</p> <p>16 the editorials. It doesn't have anything to do</p> <p>17 with the editorials, but with subsequent studies.</p> <p>18 Q. Okay. I'm going to ask you to turn</p> <p>19 back to your editorial, which is Defendants'</p> <p>20 Exhibit 32, and I'm going to point you to the</p> <p>21 middle of the first column, the last sentence.</p> <p>22 The sentence reads, quote, "In</p> | <p style="text-align: right;">164</p> <p>1 subsequently we only had looked at the narratives</p> <p>2 and hadn't formally analyzed that, there will be</p> <p>3 the subsequent formal analysis that we did.</p> <p>4 At that time, we just had looked at</p> <p>5 the narratives and followed the statements or the</p> <p>6 interpretation of the FDA medicals and</p> <p>7 statistical reviewers.</p> <p>8 Q. So you didn't independently assess</p> <p>9 the conclusions of the FDA medicals, just the</p> <p>10 reviewers at that point in time?</p> <p>11 A. No, as indicated here, we didn't do</p> <p>12 that. We just summarized what was available.</p> <p>13 Q. Okay. But this sentence doesn't say</p> <p>14 that the FDA reviewers thought that there was no</p> <p>15 robust evidence, it puts that forward as your own</p> <p>16 conclusion, does it not?</p> <p>17 A. Well, actually we refer to that in</p> <p>18 References 7 and 8, which are the statistical and</p> <p>19 medical reviewer's comments.</p> <p>20 And this is customary how we</p> <p>21 actually just, you know, draw your conclusions</p> <p>22 and state your conclusions. We refer to these</p> |



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| <p>1 papers where this information comes from.</p> <p>2 Q. Is it customary to present somebody</p> <p>3 else's conclusions as your own?</p> <p>4 A. We didn't do that. We just state</p> <p>5 here what was a fact and refer to the two</p> <p>6 references that led us to state this.</p> <p>7 Q. Okay. Before making this statement,</p> <p>8 did you do any literature review?</p> <p>9 A. On what?</p> <p>10 Q. On whether or not there's evidence</p> <p>11 that gastro adverse -- gastrointestinal adverse</p> <p>12 events were a risk factor for ulcer related</p> <p>13 complications?</p> <p>14 A. This was referring to what was found</p> <p>15 in the CLASS trial. Now it's up to you to decide</p> <p>16 whether we should have phrased it differently.</p> <p>17 I would be totally in favor to do an</p> <p>18 amendment here and say in addition there was no</p> <p>19 robust evidence in the CLASS trial that</p> <p>20 gastrointestinal adverse events were --</p> <p>21 Q. Uh-huh.</p> <p>22 A. If you go back to the medical and</p>                                | <p>165</p> <p>1 on January 12, 2007, we're referring to the BMJ,</p> <p>2 June 1, 2002 editorial that bears Bates numbers</p> <p>3 DEFS 00111312 through 313; is that right?</p> <p>4 MR. WEISS: So stipulated.</p> <p>5 MR. SAHAM: Okay. I just wanted to</p> <p>6 make sure that was clear.</p> <p>7 BY MR. WEISS:</p> <p>8 Q. Dr. Juni, I'll ask you to take a</p> <p>9 look at the first page of what I've just handed</p> <p>10 you, which is exhibit -- Defendants' <u>Exhibit 3</u>.</p> <p>11 Do you recognize this document?</p> <p>12 A. I think so. It is a printout of the</p> <p>13 rapid responses posted on BMJ's website.</p> <p>14 Q. Okay. So, is this Dr. Geis' letter</p> <p>15 in response to your editorial?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Now I'm going to ask you to</p> <p>18 turn to your letter in response to Dr. Geis'</p> <p>19 letter, which is Defendants' <u>Exhibit 161</u>, I</p> <p>20 think.</p> <p>21 A. Wait.</p> <p>22 MR. SAHAM: Or Plaintiff's</p> |
| <p>166</p> <p>1 statistical reviewers' reports, you will find</p> <p>2 that they were referring to the CLASS trial.</p> <p>3 Q. Uh-huh. But did you do any</p> <p>4 independent assessment of that conclusion?</p> <p>5 A. As I pointed out before, no. That's</p> <p>6 why I referenced these two.</p> <p>7 Q. Now, Mr. Saham introduced your reply</p> <p>8 to Dr. Geis as an exhibit. I'm going to</p> <p>9 supplement that by introducing Dr. Geiss' letter</p> <p>10 to BMJ to which you responded.</p> <p>11 MR. WEISS: If you could mark this</p> <p>12 as Defendants' <u>Exhibit 3</u>.</p> <p>13 (Defendants' <u>Exhibit Number 3</u></p> <p>14 marked for identification.)</p> <p>15 MR. SAHAM: Josh, just for the</p> <p>16 record, you keep calling <u>Exhibit 32</u> as</p> <p>17 Defendants' <u>Exhibit 32</u>.</p> <p>18 MR. WEISS: I'm sorry, I certainly</p> <p>19 don't mean to do that.</p> <p>20 MR. SAHAM: So just for the record,</p> <p>21 I think we should stipulate that, whenever anyone</p> <p>22 is referring to what's been marked as <u>Exhibit 32</u></p> | <p>167</p> <p>1 <u>Exhibit 161</u>.</p> <p>2 BY MR. WEISS:</p> <p>3 Q. Plaintiff's <u>Exhibit 161</u>.</p> <p>4 A. This is the extended version which</p> <p>5 may be longer than what we are -- I'm actually</p> <p>6 not sure --</p> <p>7 Q. Okay.</p> <p>8 A. -- if it's the same. I wouldn't be</p> <p>9 sure whether this is the same as the one we had</p> <p>10 before.</p> <p>11 Q. Okay. Let's do this. I've included</p> <p>12 both letters in the exhibit so we can just use --</p> <p>13 A. Good. We refer to this in</p> <p>14 Defendants' <u>Exhibit 3</u> just our response,</p> <p>15 electronically.</p> <p>16 Q. Sure. Sure. Okay. So, if you</p> <p>17 turn -- if you turn, what I've just handed you,</p> <p>18 Defendants' <u>Exhibit 3</u>.</p> <p>19 A. Uh-huh.</p> <p>20 Q. If you turn the pages you will</p> <p>21 eventually get to your letter in response to</p> <p>22 Dr. Geis's letter. It's entitled "Pharmacia</p>                                                     |
| <p>168</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>168</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| <p style="text-align: right;">169</p> <p>1 addresses June 1 Editorial Regarding CLASS's<br/>2 Study, Author's Response." Do you see that?<br/>3 A. Right. I see that, yes.<br/>4 Q. And then --<br/>5 MR. SAHAM: What page are you on?<br/>6 THE WITNESS: 16 of 25.<br/>7 MR. WEISS: Yes.<br/>8 MR. SAHAM: And just, Josh, this is<br/>9 a different date. This is 12 July 2002, the one<br/>10 I submitted is as 161 I think is what was<br/>11 actually published on September 2002. I don't<br/>12 think they're the same thing.<br/>13 MR. WEISS: Okay. That's fair<br/>14 enough.<br/>15 BY MR. WEISS:<br/>16 Q. But is this a letter that you<br/>17 submitted to BMJ?<br/>18 A. Provided that this is a printout<br/>19 that was posted -- material posted on BMJ's<br/>20 website, yes.<br/>21 Q. Just so we're clear, how did it come<br/>22 to be, if it's true, that there were two separate</p>                                                      | <p style="text-align: right;">171</p> <p>1 Q. Okay. I'm going to point you to the<br/>2 first paragraph, or actually the second paragraph<br/>3 of the letter, which, begins, quote, "According<br/>4 to Dr. Geis, CLASS was a single study and it was<br/>5 presented as such in the JAMA article which<br/>6 reported patients to be 'randomly assigned on a<br/>7 2:1:1 basis.'<br/>8 "This description is misleading. As<br/>9 acknowledged by Dr. Geis, there were two separate<br/>10 trials with two separate patient recruitment and<br/>11 randomization procedures." Do you see that?<br/>12 A. Uh-huh.<br/>13 Q. I'm going to ask you to turn back to<br/>14 Dr. Geis' letter, which is the first page of<br/>15 Defendants' <u>Exhibit 3</u>.<br/>16 And could you show me where it is<br/>17 that Dr. Geis supposedly acknowledges that there<br/>18 were two separate trials with two separate<br/>19 patient recruitment and randomization procedures?<br/>20 A. I'm not sure whether I can and I'm<br/>21 not sure whether this could also refer, and then<br/>22 we didn't cite it, which was a mistake, to his</p> |
| <p style="text-align: right;">170</p> <p>1 versions of the letter?<br/>2 A. Yes. That depends on the system of<br/>3 the journal there. So basically BMJ has a rapid<br/>4 response system.<br/>5 And you are -- you may or may not<br/>6 reply to the rapid responses, and then, based on<br/>7 that, BMJ decides which of the rapid responses<br/>8 will be edited as full letters.<br/>9 And invites us, or invites the<br/>10 authors based on what they wrote, to actually<br/>11 provide a compiled version that satisfies certain<br/>12 criteria in terms of word count and number of<br/>13 display items.<br/>14 Q. And then that subsequent version may<br/>15 or may not be physically published in the volume<br/>16 of BMJ?<br/>17 A. Correct.<br/>18 Q. Okay. Okay. So, as of now, we're<br/>19 looking at what I guess I understand to be the<br/>20 rapid response version of your response to<br/>21 Dr. Geis's letter?<br/>22 A. Correct.</p> | <p style="text-align: right;">172</p> <p>1 statement that he made in the JAMA. I don't<br/>2 know, so let's see where this is.<br/>3 So just the first read through,<br/>4 which was superficial, doesn't read through any<br/>5 part of his response which indicates that I'm not<br/>6 sure whether, you know, the -- and I'm actually<br/>7 supposing that, but I couldn't be sure and I<br/>8 would need to have a look at that whether to<br/>9 respond to the JAMA correspondence, was including<br/>10 that.<br/>11 And if this was the case, we should<br/>12 have referenced the JAMA response, which we<br/>13 haven't, which was a mistake.<br/>14 Q. Okay. So at least it's clear that<br/>15 your contention that Dr. Geis acknowledged that<br/>16 there were two separate trials and two separate<br/>17 patient recruitment and randomization procedures<br/>18 is not a reference to Dr. Geis's letter of the<br/>19 25th of June 2002?<br/>20 MR. SAHAM: Objection to form.<br/>21 Misstates prior testimony.<br/>22 THE WITNESS: Okay. Let me, if you</p>                                                         |

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| <p>173</p> <p>1 want an answer to that, I read it thoroughly then<br/>2 I can give you an answer. Then you need some<br/>3 patience.<br/>4 BY MR. WEISS:<br/>5 Q. Sure.<br/>6 A. No. He actually -- so I disagree<br/>7 with your statement. Geis points out the need<br/>8 for two protocols was prespecified to ensure<br/>9 blinding of starting medications. One protocol<br/>10 included celecoxib 400 milligrams, we're talking<br/>11 about Page 10 of 25, third paragraph.<br/>12 So he acknowledges there were two<br/>13 protocols. If there were two protocols, there<br/>14 were two separate randomization processes and by<br/>15 definition two trials, so our statement was<br/>16 correct.<br/>17 Q. Uh-huh. Did you ever see the<br/>18 patient recruitment and randomization procedures<br/>19 in the protocols for the trials?<br/>20 A. If you have two different protocols,<br/>21 you need to have --<br/>22 Q. Dr. Juni, with all due respect, I</p> | <p>175</p> <p>1 patients in trial # 102 comparing celecoxib<br/>2 versus diclofenac were older" and then you give a<br/>3 P value of 0.015, "had higher global assessment<br/>4 scores (P&lt;0.00001), had lower pain scores<br/>5 (P&lt;0.01), were more frequently white (P&lt;0.0001),<br/>6 were more likely to have a history of<br/>7 gastrointestinal NSAID intolerance (P&lt;0.0001) and<br/>8 were more frequently alcohol users (P&lt;0.0001)<br/>9 than patients in trial # 035 comparing celecoxib<br/>10 against ibuprofen." Do you see that?<br/>11 A. Yes.<br/>12 Q. Where did these numbers come from?<br/>13 A. You mean the P values?<br/>14 Q. Yes.<br/>15 A. I can't remember. There are two<br/>16 possibilities. It was eight years ago. One<br/>17 possibility is that they were directly available<br/>18 in the FDA reports. The other possibility is<br/>19 that, based on the information we had in the FDA<br/>20 reports, we derived them.<br/>21 Q. Uh-huh. Okay. Well, I'm going to<br/>22 show you what's previously been marked as Wolfe</p> |
| <p>174</p> <p>1 asked you a question. Did you ever see the<br/>2 recruitment and randomization procedures in the<br/>3 protocols?<br/>4 MR. SAHAM: Objection to form.<br/>5 BY MR. WEISS:<br/>6 Q. Did you ever see it, simple<br/>7 question.<br/>8 A. No.<br/>9 Q. Thank you.<br/>10 MR. SAHAM: Badgering the witness.<br/>11 You've got to let him finish answering the<br/>12 question.<br/>13 MR. WEISS: Well, when you do your<br/>14 examination, you can do it however you want.<br/>15 MR. SAHAM: The objection to form is<br/>16 reiterated.<br/>17 BY MR. WEISS:<br/>18 Q. Now, in your letter dated the 12th<br/>19 of July 2002, you say, in the middle of the<br/>20 paragraph here, "However, patients --<br/>21 A. Which page please?<br/>22 Q. This is the first page. "However,</p>                                                                                                                                                                        | <p>176</p> <p>1 <u>Exhibit 15</u>. I'm going to ask you to turn to<br/>2 Page 27 of that document. And Wolfe <u>Exhibit 15</u><br/>3 is the Medical Officer Review from Dr. James<br/>4 Witter.<br/>5 A. Yes.<br/>6 Q. So Page 27, I'd ask you to look at a<br/>7 table, which is Table 5, it's entitled "Baseline<br/>8 Demographic Characteristics ITT cohort." Do you<br/>9 see that?<br/>10 A. I do.<br/>11 Q. Okay. And so I'm referring back to<br/>12 the first page of your letter, where you say<br/>13 "patients in trial # 102 comparing celecoxib<br/>14 versus diclofenac were older" and you give a<br/>15 P value of "0.015," do you see that?<br/>16 A. Yes.<br/>17 Q. Now if I turn back to Page 27, and I<br/>18 look on Table 5 under "Age," do you see that<br/>19 which, is about the third row down?<br/>20 A. Yes.<br/>21 Q. And then under the P value column<br/>22 the P value is "0.017." Do you see that?</p>                                                                                                                                     |

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| <p style="text-align: right;">177</p> <p>1 A. Yes.</p> <p>2 Q. What explains the difference between</p> <p>3 the P value that you give in your letter versus</p> <p>4 the P value in Dr. Witter's table?</p> <p>5 A. I don't know. That could be several</p> <p>6 explanations. One is that we were not referring</p> <p>7 to this. This is what we're talking about here,</p> <p>8 it's probably analysis of these means here.</p> <p>9 That may be, I don't know. It could</p> <p>10 be that there is another source in this or in the</p> <p>11 statistical reviewer's one.</p> <p>12 It could be that we did some</p> <p>13 recalculations based on the standard deviations</p> <p>14 that there were or it could be that it's a typo.</p> <p>15 Q. Okay. Well, to rule out that it's a</p> <p>16 typo, or to try to, let's go to the next</p> <p>17 comparison, which is that the patients had higher</p> <p>18 global assessment scores and you have a P value</p> <p>19 of &lt;0.0001.</p> <p>20 Do you see patient global assessment</p> <p>21 which is about the third row from the bottom on</p> <p>22 Page 27 of Defendants -- of Wolff <u>Exhibit 15</u>?</p> | <p style="text-align: right;">179</p> <p>1 years, you know, to just tell you</p> <p>2 straightforwardly.</p> <p>3 Q. Okay. Well, then, let's -- we'll</p> <p>4 come back to this if we have some time later.</p> <p>5 A. Okay. That's good.</p> <p>6 Q. But you would agree with me, though,</p> <p>7 if you take a quick look at this Table 5 that all</p> <p>8 of the P values that you reference in your letter</p> <p>9 are different from the P values in Table 5 of</p> <p>10 Dr. Witter's table.</p> <p>11 And you can take a quick look to see</p> <p>12 if you agree with me about that.</p> <p>13 A. I would agree with you and my</p> <p>14 conclusion is that probably we were not referring</p> <p>15 to Table 5, but I couldn't be sure about that,</p> <p>16 correct.</p> <p>17 Q. Okay. Fair enough. Incidentally,</p> <p>18 do you have any formal training in biostatistics?</p> <p>19 A. A formal training in terms of a</p> <p>20 master's degree or are you talking a Ph.D.?</p> <p>21 Q. Have you done any course work in</p> <p>22 biostatistics?</p> |
| <p style="text-align: right;">178</p> <p>1 A. Yes, I see that.</p> <p>2 Q. And do you see in the right-hand</p> <p>3 column under P value that the P value there is</p> <p>4 .965?</p> <p>5 A. Yes. I see that, too.</p> <p>6 Q. And that's different from the P</p> <p>7 value presented in your letter, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. And you don't have an</p> <p>10 explanation, as you sit here today, for the</p> <p>11 difference in that P value?</p> <p>12 A. Well, the most likely explanation is</p> <p>13 that our statement was not referring to this</p> <p>14 Table 5. Again, we can sort it out, if you give</p> <p>15 me an hour.</p> <p>16 Q. Yes. Well, we don't have an hour.</p> <p>17 I'm just trying to see if you -- I'm trying to</p> <p>18 understand where you got these P values from.</p> <p>19 A. I would need to look that up. If</p> <p>20 you -- I would need to find that out.</p> <p>21 Q. Okay.</p> <p>22 A. And I'm unable right now after eight</p>                                                                                                                                                       | <p style="text-align: right;">180</p> <p>1 A. I have done course work in</p> <p>2 biostatistics, but I don't have a formal degree</p> <p>3 in biostatistics.</p> <p>4 Q. Okay. Do you consider yourself a</p> <p>5 biostatistician?</p> <p>6 A. No. I consider myself a clinical</p> <p>7 epidemiologist, as I pointed out before.</p> <p>8 Q. Okay. And in connection to BMJ</p> <p>9 article, which is <u>Exhibit 32</u>, who did the</p> <p>10 bioanalysis to the extent it was?</p> <p>11 A. It was Dr. Rutjes and myself,</p> <p>12 Dr. Rutjes is a Ph.D. in epidemiology, not a</p> <p>13 biostatistician.</p> <p>14 Q. And does Dr. Dieppe have a degree in</p> <p>15 biostatistics?</p> <p>16 A. No.</p> <p>17 Q. Looking back at your letter of the</p> <p>18 12th of July on the first page, you go on to say</p> <p>19 that quote, "Considering these differences as</p> <p>20 well as different follow-up durations, and</p> <p>21 different COX-2 selectivities and</p> <p>22 gastro-intestinal side-effects of the comparator</p>                              |

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| <p style="text-align: right;">181</p> <p>1 drugs, simple pooling of the data by adding up is</p> <p>2 clearly misleading and potentially drowns</p> <p>3 important differences in effect between estimates</p> <p>4 between the two trials." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. You understand that a pooling</p> <p>7 of the data was prespecified in the protocols,</p> <p>8 correct?</p> <p>9 A. As a first step, which is not the</p> <p>10 final step, that's fair enough.</p> <p>11 Q. Okay.</p> <p>12 A. But not as an ultimate step.</p> <p>13 Q. And would simple pooling, even for</p> <p>14 the first step, which was prespecified, have been</p> <p>15 misleading and drowned out important differences</p> <p>16 in effect estimates between the two trials?</p> <p>17 A. I didn't understand the question.</p> <p>18 Q. Well, you said that you understood</p> <p>19 that the protocol prespecified that the two</p> <p>20 trials would be pooled in the first step of the</p> <p>21 statistical analysis, correct?</p> <p>22 A. Uh-huh.</p> | <p style="text-align: right;">183</p> <p>1 at this point whether somebody who holds a full</p> <p>2 professorship at Yale in biostatistics, has a</p> <p>3 Ph.D. in biostatistics and is head of that</p> <p>4 department has more knowledge of biostatistics</p> <p>5 than you?</p> <p>6 MR. SAHAM: Objection to form. Lack</p> <p>7 of foundation.</p> <p>8 THE WITNESS: To be honest, no. The</p> <p>9 point there is, I experienced a lot of professors</p> <p>10 of biostatistics, who have a Ph.D. in</p> <p>11 biostatistics also from very good universities</p> <p>12 who were mediocre at best.</p> <p>13 I wouldn't imply that he is mediocre</p> <p>14 at best, but I don't know about that, so we could</p> <p>15 find out.</p> <p>16 BY MR. WEISS:</p> <p>17 Q. Okay.</p> <p>18 A. It could well be that he is more</p> <p>19 knowledgeable than I am, but I wouldn't rule out</p> <p>20 that we have the same sort of knowledge, I don't</p> <p>21 know.</p> <p>22 Q. Okay. So you, without any formal</p> |
| <p style="text-align: right;">182</p> <p>1 Q. And so would pooling for that</p> <p>2 purpose, for that purpose, have led to misleading</p> <p>3 and potentially drown out important differences</p> <p>4 in effect estimates between the two trials?</p> <p>5 A. Now this is a scientific debate and</p> <p>6 in my view clearly yes.</p> <p>7 Q. And are there people who would</p> <p>8 disagree with you?</p> <p>9 A. I'm sure there are.</p> <p>10 Q. Okay. And would they have a</p> <p>11 reasonable basis to disagree with you?</p> <p>12 A. No.</p> <p>13 Q. Okay. Do you think that the head of</p> <p>14 the biostatistics department at Yale University</p> <p>15 has more knowledge about biostatistics than you?</p> <p>16 MR. SAHAM: Objection to form.</p> <p>17 THE WITNESS: And who is it?</p> <p>18 BY MR. WEISS:</p> <p>19 Q. Robert Makuch?</p> <p>20 A. I don't know him personally. We</p> <p>21 could personally meet and find out.</p> <p>22 Q. Uh-huh. But do you have an opinion</p>                                                              | <p style="text-align: right;">184</p> <p>1 training or degree in biostatistics, could</p> <p>2 potentially be as knowledgeable as he in</p> <p>3 biostatistics?</p> <p>4 MR. SAHAM: Objection to form.</p> <p>5 Misstates prior testimony.</p> <p>6 THE WITNESS: You could try, you</p> <p>7 know, if this is -- it's not all about formal</p> <p>8 degrees. It's also a lot about, you know,</p> <p>9 experiences and about research activities and</p> <p>10 having just the adequate environment.</p> <p>11 BY MR. WEISS:</p> <p>12 Q. Uh-huh.</p> <p>13 A. I wouldn't know, we could find out,</p> <p>14 and I wouldn't have a problem with admitting that</p> <p>15 he's more knowledgeable, could well be.</p> <p>16 BY MR. WEISS:</p> <p>17 Q. Uh-huh. Now you mentioned</p> <p>18 experience as a factor in determining the extent</p> <p>19 of somebody's knowledge and proficiency in</p> <p>20 biostatistics.</p> <p>21 At the point that you wrote this</p> <p>22 article, you were how old?</p>              |

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| <p style="text-align: right;">185</p> <p>1 A. Let's see, how old was I there, 35?</p> <p>2 Q. Okay. And how much experience did</p> <p>3 you have to that date in clinical trials?</p> <p>4 A. You pointed that out. I had at that</p> <p>5 time planned two randomized trials and a cohort</p> <p>6 study and I had done quite a lot of analyses at</p> <p>7 that time.</p> <p>8 But, I still, you know, eight years</p> <p>9 down the line, I still stick to my conclusions</p> <p>10 with -- well considerably more experience, but --</p> <p>11 Q. Okay.</p> <p>12 A. -- inexperience doesn't make things</p> <p>13 wrong per se, so it depends. You know, to have</p> <p>14 an open debate is fair enough.</p> <p>15 Q. Fair enough. On the second page of</p> <p>16 your June -- I'm sorry, your July 12 letter,</p> <p>17 which is part of Defendants' <u>Exhibit 3</u>, it says</p> <p>18 in the second paragraph, "It was explicitly</p> <p>19 stipulated that first the overall hypothesis had</p> <p>20 to be tested whether celecoxib and the pooled</p> <p>21 NSAIDs were different in terms of the incidence</p> <p>22 of ulcer complications.</p> | <p style="text-align: right;">187</p> <p>1 A. No, certainly after.</p> <p>2 Q. Okay. And did you have an</p> <p>3 understanding that as early as April --</p> <p>4 A. Sorry, what did I say. Sorry, I</p> <p>5 take it back.</p> <p>6 Q. You said it had to be after.</p> <p>7 A. I first read the -- no, I was wrong.</p> <p>8 I was confused with your timelines, okay?</p> <p>9 Q. Okay.</p> <p>10 A. So I -- the first thing I read at</p> <p>11 that time point was the article with the letters.</p> <p>12 That's the first thing I have read.</p> <p>13 Q. Okay. Before you read the JAMA</p> <p>14 article with the letters, had you read the</p> <p>15 article in The Washington Post from August 5th,</p> <p>16 2001?</p> <p>17 A. I'm 95 percent sure that I read the</p> <p>18 article in The Washington Post after the</p> <p>19 manuscript and the letters.</p> <p>20 Q. Okay. In your view, does the JAMA</p> <p>21 article disclose that the CLASS trial failed its</p> <p>22 primary end point?</p>                                       |
| <p style="text-align: right;">186</p> <p>1 "If the test used for this</p> <p>2 comparison resulted in nonsignificant P values,</p> <p>3 the null hypothesis would be retained and the</p> <p>4 procedure stopped." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you have an understanding</p> <p>7 at the time that you wrote the BMJ editorial that</p> <p>8 the CLASS study had failed to meet its primary</p> <p>9 end point?</p> <p>10 A. When I wrote the editorial?</p> <p>11 Q. Uh-huh.</p> <p>12 A. Of course, when I wrote the</p> <p>13 editorial, I had understood it.</p> <p>14 Q. Okay. And before you wrote the</p> <p>15 editorial -- I'm sorry strike that.</p> <p>16 Before you read the -- strike that.</p> <p>17 When was the first time that you</p> <p>18 read the JAMA article recording the results of</p> <p>19 the CLASS trial?</p> <p>20 A. I can't remember.</p> <p>21 Q. Okay. Was it before you reviewed</p> <p>22 the information on the FDA website?</p>                                                                                                                                                               | <p style="text-align: right;">188</p> <p>1 A. Sorry -- in our editorial?</p> <p>2 Q. No. In your view, does the JAMA</p> <p>3 article disclose that the CLASS trial failed to</p> <p>4 meet its primary end point?</p> <p>5 A. No.</p> <p>6 Q. No. Do you, did you read the</p> <p>7 editorial by Dr. Michael Wolfe which accompanied</p> <p>8 the CLASS article in JAMA in September of 2000?</p> <p>9 A. I'm sure I read it, but I don't</p> <p>10 remember its content.</p> <p>11 Q. Okay. Now, I'm going to hand you</p> <p>12 what's previously been marked as Wolfe <u>Exhibit 4</u>.</p> <p>13 A. Uh-huh.</p> <p>14 Q. This is -- I just ripped it off.</p> <p>15 There are copies attached. Dr. Juni, do you</p> <p>16 recognize this document?</p> <p>17 A. What do you mean by recognize?</p> <p>18 Q. Have you seen it before?</p> <p>19 A. I have certainly seen it before, but</p> <p>20 I wouldn't recognize it optically, no.</p> <p>21 Q. Okay. Now, I'm going to ask you to</p> <p>22 look at the first page of what I've just handed</p> |



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| <p style="text-align: right;">189</p> <p>1 you, which is Wolfe Exhibit 4.</p> <p>2 And on the first page, the second --</p> <p>3 the right-hand column, last paragraph, I'm going</p> <p>4 to read a sentence into the record, which is,</p> <p>5 quote, "However, even though the combined</p> <p>6 incidence of symptomatic ulcers or POBs</p> <p>7 associated with celecoxib was significantly lower</p> <p>8 than with the comparator drugs, careful</p> <p>9 examination of the data shows that the rate of</p> <p>10 ulcer complications alone, the primary end point</p> <p>11 of the study, was not."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Does that indicate to you</p> <p>15 that Dr. Wolfe understood when he read the JAMA</p> <p>16 article that the study had failed to meet its</p> <p>17 primary end point?</p> <p>18 MR. SAHAM: Objection to form.</p> <p>19 Misstates what the document says.</p> <p>20 THE WITNESS: No. It doesn't</p> <p>21 indicate that. It indicates that Dr. Wolfe</p> <p>22 understood the situation differently than I did.</p> | <p style="text-align: right;">191</p> <p>1 what is described in the JAMA article meaning</p> <p>2 that, you know, he's having two values, one</p> <p>3 reaching statistical significance, the other one</p> <p>4 showing a strong trend in favor of celecoxib.</p> <p>5 And based on that even if the study</p> <p>6 missed the primary end point, that I can't</p> <p>7 remember or know whether I understood it at the</p> <p>8 time what he has written here, and that it</p> <p>9 clearly indicates a benefit of celecoxib that I</p> <p>10 would not have concluded having seen the entire</p> <p>11 data not just the first six months.</p> <p>12 BY MR. WEISS:</p> <p>13 Q. Okay. Well, if you had read the</p> <p>14 JAMA article when it came out -- well, strike</p> <p>15 that.</p> <p>16 Is your view of the extent to which</p> <p>17 the JAMA article is quote, unquote, "misleading,"</p> <p>18 affected by whether or not the company disclosed</p> <p>19 that the study failed its primary end point?</p> <p>20 MR. SAHAM: Objection to form.</p> <p>21 THE WITNESS: My statement on</p> <p>22 whether the article is misleading, whether this</p> |
| <p style="text-align: right;">190</p> <p>1 This could be based just on the JAMA</p> <p>2 article or based on additional documents he</p> <p>3 looked at, potentially also including some</p> <p>4 unpublished material at the time, I don't know.</p> <p>5 BY MR. WEISS:</p> <p>6 Q. Uh-huh.</p> <p>7 A. So, if he understands it</p> <p>8 differently, that's fair enough.</p> <p>9 Q. Okay. And anyone who would have</p> <p>10 read the Wolfe article, of course, or editorial,</p> <p>11 would have understood that the study failed its</p> <p>12 primary end point, correct?</p> <p>13 MR. SAHAM: Objection to form.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MR. WEISS:</p> <p>16 Q. Okay. So did you -- do you recall</p> <p>17 reading the Wolfe editorial and understanding</p> <p>18 that the study had failed its primary end point</p> <p>19 when you read the CLASS article at the same time?</p> <p>20 MR. SAHAM: Objection to form.</p> <p>21 THE WITNESS: I don't recall that.</p> <p>22 I just -- I perceived that he describes exactly</p>                                    | <p style="text-align: right;">192</p> <p>1 is affected by that, no, it's not.</p> <p>2 BY MR. WEISS:</p> <p>3 Q. It's not. So you wouldn't review</p> <p>4 the JAMA article in a different light if you</p> <p>5 understood that the study had failed its primary</p> <p>6 end point than you would if you didn't understand</p> <p>7 that?</p> <p>8 MR. SAHAM: Objection to form.</p> <p>9 THE WITNESS: Can I -- would you</p> <p>10 repeat the question, please.</p> <p>11 (Record read.)</p> <p>12 THE WITNESS: I would still conclude</p> <p>13 that the four discrepancies were not -- that we</p> <p>14 have pointed out earlier, were not justifiable.</p> <p>15 And, no, I wouldn't view it in a different light,</p> <p>16 no.</p> <p>17 BY MR. WEISS:</p> <p>18 Q. Now going back to your letter of the</p> <p>19 12th of July in 2002, on the second page, in the</p> <p>20 language that I read into the record previously</p> <p>21 about the fact that the -- it was stipulated that</p> <p>22 the overall hypothesis had to be tested against</p>                                                                                                    |

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| <p style="text-align: right;">193</p> <p>1 the pooled NSAIDs and if this test was a</p> <p>2 nonsignificant P value, the null hypothesis would</p> <p>3 be retained.</p> <p>4 My question is do you have any</p> <p>5 understanding of whether or not this analysis was</p> <p>6 followed with respect to the primary end point of</p> <p>7 the CLASS trial?</p> <p>8 A. The primary end point, including all</p> <p>9 of the events that had occurred up to 15 months,</p> <p>10 which were not censored or the primary end point</p> <p>11 or the main outcome measures as specified in the</p> <p>12 paper? What are you referring to?</p> <p>13 Q. No. What I'm referring to is the</p> <p>14 primary end point at six or 12 months, either</p> <p>15 way.</p> <p>16 A. That's not the same. When I talk</p> <p>17 about the primary end point, I want -- I refer to</p> <p>18 the definition of the outcome measure and I refer</p> <p>19 to a time point which could be up to 12 or</p> <p>20 15 months or not.</p> <p>21 Q. The study failed its primary end</p> <p>22 point, correct?</p>     | <p style="text-align: right;">195</p> <p>1 Q. How could they have concluded that</p> <p>2 the study failed its primary end point unless</p> <p>3 they followed the prespecified analysis?</p> <p>4 A. If I look into the paper, I'm not</p> <p>5 talking about the editorial now, I'm talking</p> <p>6 about the paper, I see two main outcomes, the</p> <p>7 composite of symptomatic ulcers or ulcer</p> <p>8 complications and ulcer complications. And I see</p> <p>9 that there was a sample size consideration based</p> <p>10 on the less -- least frequent of the two primary</p> <p>11 outcome measures, the main outcome measures.</p> <p>12 And when I then look into the</p> <p>13 comment section of the paper, I find that the two</p> <p>14 main outcome measures are actually given equal</p> <p>15 rights and that they will just, you know, refer</p> <p>16 to both of these outcome measures by reporting</p> <p>17 that one reached and the other reached not</p> <p>18 statistical significance, also pointing out that</p> <p>19 there was a clear-cut trend.</p> <p>20 Now, many people who will look into</p> <p>21 that, will look into this pattern and indicate</p> <p>22 then, okay, even so, the -- for one of the two</p> |
| <p style="text-align: right;">194</p> <p>1 A. The study failed its primary end</p> <p>2 point.</p> <p>3 Q. And they reached the conclusion that</p> <p>4 the study failed its end point, primary end</p> <p>5 point, by performing the analysis that you</p> <p>6 describe here, correct?</p> <p>7 MR. SAHAM: Objection to form and</p> <p>8 foundation.</p> <p>9 THE WITNESS: Let me see.</p> <p>10 BY MR. WEISS:</p> <p>11 Q. It was explicitly stipulated that</p> <p>12 the first overall hypothesis had to be tested</p> <p>13 whether celecoxib and the pooled NSAIDs were</p> <p>14 different in terms of the incidence of ulcer</p> <p>15 complications. That's what I'm referring to.</p> <p>16 A. Yes. I understood that. They did</p> <p>17 not follow the prespecified approach, because</p> <p>18 they did not include the entire body of data, and</p> <p>19 they did not follow the prespecified manner of</p> <p>20 interpreting the results, because they concluded</p> <p>21 that celecoxib was superior to the NSAIDs and</p> <p>22 this did not follow the specified process.</p> | <p style="text-align: right;">196</p> <p>1 end points of equal rights statistical</p> <p>2 significance was missed, the overall pattern of</p> <p>3 the results we're seeing indicates that there is</p> <p>4 a benefit.</p> <p>5 Q. Dr. Wolfe and others understood that</p> <p>6 the trial had failed its primary end point as</p> <p>7 evidenced by Dr. Wolfe's editorial, correct?</p> <p>8 MR. SAHAM: Objection to form.</p> <p>9 THE WITNESS: Let me just quickly</p> <p>10 see. That's this one.</p> <p>11 BY MR. WEISS:</p> <p>12 Q. Uh-huh.</p> <p>13 A. Dr. Wolfe understood that, correct.</p> <p>14 Q. And, if he understood that the study</p> <p>15 failed its primary end point -- well, strike</p> <p>16 that.</p> <p>17 How could anyone have determined</p> <p>18 that the study failed its primary end point</p> <p>19 unless they followed the prespecified statistical</p> <p>20 analysis plan to make that determination?</p> <p>21 A. Well, I don't know what he is</p> <p>22 referring to. Is he referring to the six-month</p>                                                                                                                                                                                                 |

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| <p style="text-align: right;">197</p> <p>1 data or is he referring to the full data?</p> <p>2 He could refer just to the six-month</p> <p>3 data and stipulate that it failed the primary end</p> <p>4 point, which wasn't. The primary end point was</p> <p>5 also complications as we indicated with, you</p> <p>6 know, the maximum of accumulated follow-up</p> <p>7 durations.</p> <p>8 I'm not sure whether Dr. Wolfe</p> <p>9 understood that or not. I'm not in a position to</p> <p>10 determine that.</p> <p>11 Q. The study failed to meet its primary</p> <p>12 end point at six months and at 12 months,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. So you're drawing a distinction</p> <p>16 without a difference, correct?</p> <p>17 MR. SAHAM: Objection to form,</p> <p>18 argumentative.</p> <p>19 THE WITNESS: Sorry, could you</p> <p>20 repeat the question?</p> <p>21 BY MR. WEISS:</p> <p>22 Q. You're making a distinction without</p>                                                                                                                                                                                                   | <p style="text-align: right;">199</p> <p>1 MR. SAHAM: Are you finished?</p> <p>2 BY MR. WEISS:</p> <p>3 Q. How about you listen and try my</p> <p>4 question, which is -- Dr. Wolfe understood the</p> <p>5 studies --</p> <p>6 MR. SAHAM: Josh, you can't</p> <p>7 interrupt the witness.</p> <p>8 MR. WEISS: He's not your witness.</p> <p>9 MR. SAHAM: It doesn't matter. I</p> <p>10 can object. You're improperly examining him.</p> <p>11 MR. WEISS: Okay, object all you</p> <p>12 want.</p> <p>13 BY MR. WEISS:</p> <p>14 Q. Dr. Wolfe understood that the study</p> <p>15 failed to meet its primary end point, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Yes. And whether he</p> <p>18 understood --</p> <p>19 MR. SAHAM: Josh, it's completely</p> <p>20 improper to interrupt the witness. You're</p> <p>21 interrupting the witness.</p> <p>22 MR. WEISS: It's improper for you to</p>                                                 |
| <p style="text-align: right;">198</p> <p>1 a difference as to whether or not Dr. Wolfe</p> <p>2 understood this, it failed its end point at six</p> <p>3 months or 12 months?</p> <p>4 MR. SAHAM: Objection to form.</p> <p>5 THE WITNESS: This is a statement</p> <p>6 which looks at medical statistics as if they were</p> <p>7 just, you know, nonsignificant or significant</p> <p>8 results.</p> <p>9 If we look at the point estimates of</p> <p>10 the relative risks, the difference between the</p> <p>11 six-month and the full results is considerable in</p> <p>12 that the relative risk at 12 months is very much</p> <p>13 near to one.</p> <p>14 Whereas the relative risk at six</p> <p>15 months is still quite below one with a confidence</p> <p>16 interval still overlapping the null effect the P</p> <p>17 value not reaching statistical significance.</p> <p>18 But the most likely estimate and the</p> <p>19 most typical estimate for the study being the</p> <p>20 relative risks that Silverstein and colleagues</p> <p>21 estimated. At 12 months, this is not the case.</p> <p>22 And this is not about statistical significance.</p> | <p style="text-align: right;">200</p> <p>1 make loud speaking objections --</p> <p>2 MR. SAHAM: Interruption of a</p> <p>3 witness.</p> <p>4 MR. WEISS: -- somebody who is not</p> <p>5 even your witness.</p> <p>6 MR. SAHAM: It doesn't matter whose</p> <p>7 witness it is. He has the right to complete his</p> <p>8 answer.</p> <p>9 MR. WEISS: Stop. You know, you sat</p> <p>10 here and asked 400 leading questions. I didn't</p> <p>11 give speaking objections, okay. So I'd</p> <p>12 appreciate the same courtesy.</p> <p>13 MR. SAHAM: I would appreciate that</p> <p>14 you let him finish answers to your question.</p> <p>15 MR. WEISS: He finished his answer,</p> <p>16 whatever you say.</p> <p>17 MR. SAHAM: -- because that's</p> <p>18 improper and I move to strike the next question.</p> <p>19 MR. WEISS: I'm continuing in my</p> <p>20 examination.</p> <p>21 THE WITNESS: It's okay. It's okay.</p> <p>22 BY MR. WEISS:</p> |

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| <p style="text-align: right;">201</p> <p>1 Q. Is he your lawyer?</p> <p>2 A. No.</p> <p>3 Q. Do you take instruction from him?</p> <p>4 A. No.</p> <p>5 Q. Okay, good. Dr. Wolfe understood</p> <p>6 that the study failed to meet its primary end</p> <p>7 point, correct?</p> <p>8 MR. SAHAM: Objection to form,</p> <p>9 foundation.</p> <p>10 THE WITNESS: Dr. Wolfe specified in</p> <p>11 here that the study failed its primary end point,</p> <p>12 and based on the statement he makes, I'm not in a</p> <p>13 position to determine whether he really meant the</p> <p>14 primary end point meaning, you know, the relative</p> <p>15 risks actually being calculated just using all of</p> <p>16 the events that have accumulated, all meaning</p> <p>17 what was published in this article.</p> <p>18 BY MR. WEISS:</p> <p>19 Q. The relative risks aren't part of</p> <p>20 the analysis of whether or not a study fails its</p> <p>21 primary end point, are they?</p> <p>22 MR. SAHAM: Objection to form,</p>                                        | <p style="text-align: right;">203</p> <p>1 A. Well, they were just cryptic.</p> <p>2 Q. They were cryptic.</p> <p>3 A. Indeed.</p> <p>4 Q. Did anyone ever say in the JAMA</p> <p>5 article or otherwise that celecoxib in the CLASS</p> <p>6 trial met or satisfied the primary end point?</p> <p>7 A. Did anyone say in the CLASS trial</p> <p>8 that celecoxib did not meet the primary end</p> <p>9 point?</p> <p>10 Q. No. No. No. No. No.</p> <p>11 A. They didn't talk about the primary</p> <p>12 end point. Yes. Yes. Yes. Yes. Yes.</p> <p>13 Q. That's not the question I asked you.</p> <p>14 MR. WEISS: If you could read back</p> <p>15 my question.</p> <p>16 MR. SAHAM: Josh, your record,</p> <p>17 you're talking over each other and the record is</p> <p>18 going to be unclear.</p> <p>19 MR. WEISS: That will be my problem.</p> <p>20 (Record read.)</p> <p>21 BY MR. WEISS:</p> <p>22 Q. Okay. Strike that.</p>                                                                                  |
| <p style="text-align: right;">202</p> <p>1 foundation.</p> <p>2 THE WITNESS: The relative risks are</p> <p>3 not part of the analysis of whether or not the</p> <p>4 trial fails its primary end point. However, they</p> <p>5 are part of any reasonable interpretation of the</p> <p>6 overall pattern of trial results.</p> <p>7 BY MR. WEISS:</p> <p>8 Q. Correct. But, if the study fails</p> <p>9 its primary end point regardless of what the</p> <p>10 relative risks are, you don't proceed to do any</p> <p>11 further analysis, correct? That's what the</p> <p>12 protocol says.</p> <p>13 MR. SAHAM: Objection to form,</p> <p>14 foundation.</p> <p>15 THE WITNESS: The protocol says you</p> <p>16 don't proceed to do any further analysis and you</p> <p>17 do not conclude that celecoxib is more beneficial</p> <p>18 than the comparator drugs.</p> <p>19 BY MR. WEISS:</p> <p>20 Q. Now, with respect to the primary end</p> <p>21 point, they didn't conclude that celecoxib was</p> <p>22 different than the comparator drugs, did they?</p> | <p style="text-align: right;">204</p> <p>1 A. Oh, can you strike?</p> <p>2 Q. I can strike my own question.</p> <p>3 A. That's interesting.</p> <p>4 MR. SAHAM: It doesn't get stricken,</p> <p>5 but you just start -- but he is indicating he's</p> <p>6 starting a new question and you're responding to</p> <p>7 it.</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MR. WEISS:</p> <p>10 Q. Did anybody indicate in the CLASS --</p> <p>11 in the JAMA article recording the results of the</p> <p>12 CLASS trial, that celecoxib had satisfied the</p> <p>13 primary end point of the trial?</p> <p>14 A. No.</p> <p>15 Q. Okay. Let's move on.</p> <p>16 You go on to say in your July 12th</p> <p>17 letter that you evaluated, quote, "Evaluated a</p> <p>18 narrative review of the 44 patients who</p> <p>19 experienced ulcer complications in CLASS?</p> <p>20 "Only 11 patients (25%) developed</p> <p>21 gastrointestinal symptoms before the actual ulcer</p> <p>22 complication occurred." Do you see that?</p> |

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| <p>205</p> <p>1 A. Yes.</p> <p>2 Q. Okay. That analysis requires the</p> <p>3 application of clinical judgment does it not?</p> <p>4 A. Indeed it does.</p> <p>5 Q. Okay. And you applied your own</p> <p>6 clinical judgment to that analysis, correct?</p> <p>7 A. Well, the three authors did.</p> <p>8 Q. Fair enough.</p> <p>9 A. Indeed.</p> <p>10 Q. And none of the three authors are</p> <p>11 gastroenterologists, correct?</p> <p>12 A. This is correct.</p> <p>13 Q. And somebody could certainly, a</p> <p>14 gastroenterologist, for example, have a different</p> <p>15 view of whether or not a symptom constituted a</p> <p>16 sentinel symptom or did not, correct?</p> <p>17 A. Depending on the results, he could</p> <p>18 have a different view whether there were symptoms</p> <p>19 presented before the actual ulcer complication</p> <p>20 occurred or not. This depends on the narrative.</p> <p>21 The rest is statistics.</p> <p>22 Q. Right. But I could, for example,</p>                                                                                                                           | <p>207</p> <p>1 distinguished from prespecified positions, all of</p> <p>2 the study results would have been on the table,</p> <p>3 everybody would have been in a position to openly</p> <p>4 lead this debate.</p> <p>5 Q. Okay. You talked about the</p> <p>6 censoring rules and I think you mentioned a</p> <p>7 48-hour censoring rule.</p> <p>8 Correct me if I'm wrong, but doesn't</p> <p>9 the censoring rule only address whether or not an</p> <p>10 event is counted as an end point in a trial?</p> <p>11 A. Indeed, but, if you then define</p> <p>12 outcomes or events, you need to be concordant,</p> <p>13 you know, with the censoring rules.</p> <p>14 So there are certain -- you need</p> <p>15 some concordance in there and it would need to be</p> <p>16 discussed here and the way we classified the</p> <p>17 events is debatable.</p> <p>18 It's one way of looking at and if</p> <p>19 somebody disagrees on the way and reclassifies it</p> <p>20 and shows me whether the results were</p> <p>21 systematically different, I would be able to, you</p> <p>22 know, to appreciate that and just understand</p> |
| <p>206</p> <p>1 say that I think symptoms that happen 24 hours in</p> <p>2 advance of an ulcer complication are sufficient</p> <p>3 and somebody could say, no, it has to be at least</p> <p>4 48 hours before the ulcer complication in my</p> <p>5 view, correct?</p> <p>6 MR. SAHAM: Objection to form.</p> <p>7 THE WITNESS: Correct. However, the</p> <p>8 protocol prespecified certain rules about when an</p> <p>9 event would be censored and the definitions about</p> <p>10 this will need to respect these rules.</p> <p>11 So it's within, you know, the</p> <p>12 48-hour time frame actually in there was</p> <p>13 prespecified in the protocol.</p> <p>14 BY MR. WEISS:</p> <p>15 Q. Okay. With all due respect --</p> <p>16 A. Again, with all due respect, and all</p> <p>17 of these issues that we're talking about include</p> <p>18 subjective judgement and in a situation in which</p> <p>19 all of the trial results had been openly</p> <p>20 discussed, and the subjective judgement would</p> <p>21 have been distinguished and post hoc positions</p> <p>22 like all we see here would have been</p> | <p>208</p> <p>1 whether they are, indeed, systematically</p> <p>2 different. I haven't seen a reanalysis of that.</p> <p>3 Q. Okay. And even assuming that you</p> <p>4 were right here, that only 11 patients or</p> <p>5 25 percent developed gastrointestinal symptoms</p> <p>6 before the actual ulcer complication occurred,</p> <p>7 that would lead potentially to a conclusion that</p> <p>8 25 percent of the patients who withdrew for</p> <p>9 symptoms would have gone on to develop a</p> <p>10 complicated ulcer if they had not withdrawn.</p> <p>11 MR. SAHAM: Objection to form.</p> <p>12 THE WITNESS: Let me see, I need the</p> <p>13 question to be repeated.</p> <p>14 (Record back.)</p> <p>15 THE WITNESS: Yes, indeed. And</p> <p>16 75 percent of patients would have not.</p> <p>17 BY MR. WEISS:</p> <p>18 Q. Okay. Did you do any analysis to</p> <p>19 determine whether applying that 25 percent number</p> <p>20 to the number of patients who withdrew in the</p> <p>21 diclofenac arm would have yielded a statistically</p> <p>22 significant result on the primary end point</p>                          |

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| <p style="text-align: right;">209</p> <p>1 compared to celecoxib?</p> <p>2 A. We most certainly did not do that,</p> <p>3 because we were not in a position to do that.</p> <p>4 Q. Okay. You go on to say at the end</p> <p>5 of this paragraph, notably -- quote, "Notably,</p> <p>6 none of the 44 patients who experienced ulcer</p> <p>7 complications had a symptomatic ulcer as a</p> <p>8 precursor." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are you aware that the</p> <p>11 protocol prespecified that patients who had a</p> <p>12 symptomatic ulcer had to be withdrawn from the</p> <p>13 trial?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So, in that regard, you would</p> <p>16 never have known or nobody would ever have known</p> <p>17 if a patient who had a symptomatic ulcer later</p> <p>18 experienced a complicated ulcer in the trial,</p> <p>19 other than outside the follow-up period?</p> <p>20 A. Yes. There again, I think there</p> <p>21 was -- but, we would need to look into the</p> <p>22 protocol into these documents here to see what</p>                                                   | <p style="text-align: right;">211</p> <p>1 arguments by evidence, that's all.</p> <p>2 Q. Well, yes, that's all and all I'm</p> <p>3 trying to find out is how that statement makes</p> <p>4 any sense in light of the fact that the protocol</p> <p>5 provides if you have a symptomatic ulcer, you</p> <p>6 have to be withdrawn from the trial.</p> <p>7 MR. SAHAM: Objection to form.</p> <p>8 THE WITNESS: And, again, if we go</p> <p>9 back to Geis, we can find out whether that makes</p> <p>10 sense. Shall we do that, because I would like to</p> <p>11 have a look at the way he stipulates this point.</p> <p>12 Give me a moment, and then we can</p> <p>13 figure out whether it makes sense or not. So --</p> <p>14 okay, also the withdraw rate.</p> <p>15 And so Geis stipulates on</p> <p>16 Defendants' <u>Exhibit 3</u>, Page 11 out of 25, last</p> <p>17 paragraph. "Also, the withdrawal rate of</p> <p>18 patients due to symptomatic ulcers was</p> <p>19 statistically greater in the NSAID group versus</p> <p>20 celecoxib group and the difference was most</p> <p>21 apparent after the first six months of the study.</p> <p>22 "Since symptomatic ulcers are</p> |
| <p style="text-align: right;">210</p> <p>1 the censoring rules were.</p> <p>2 If I remember correctly, we were</p> <p>3 talking about two weeks after withdrawal of a</p> <p>4 patient that he would still be included, you</p> <p>5 know, in the trial.</p> <p>6 Q. Right. Well, assuming that were the</p> <p>7 follow-up period, two weeks, and assuming that</p> <p>8 somebody presented with a symptomatic ulcer, was</p> <p>9 withdrawn from the trial, and was followed up for</p> <p>10 two weeks, other than during that two-week</p> <p>11 period, you would never know if they went on to</p> <p>12 develop an ulcer complication?</p> <p>13 A. Yes, of course. And it's</p> <p>14 interesting that then, you know, these arguments</p> <p>15 are being brought up by the trialists to justify</p> <p>16 their decisions.</p> <p>17 I'm not, you know, I don't have to</p> <p>18 bring in anything. I'm just -- we were trying</p> <p>19 there to understand their way of arguments, their</p> <p>20 line of arguments.</p> <p>21 And we didn't find that, based on</p> <p>22 the data we had available, we could support these</p> | <p style="text-align: right;">212</p> <p>1 precursors of ulcer complications, clearly</p> <p>2 high-risk patients were being depleted from the</p> <p>3 NSAID group more quickly than from the celecoxib</p> <p>4 group.</p> <p>5 BY MR. WEISS:</p> <p>6 Q. Uh-huh.</p> <p>7 A. This implies that as a result of the</p> <p>8 selective withdrawal of patients -- through this</p> <p>9 selective withdrawal of patients results would be</p> <p>10 biased against celecoxib.</p> <p>11 Q. Uh-huh.</p> <p>12 A. When making this statement, we</p> <p>13 tested whether it made sense or not and you just</p> <p>14 correctly stipulated that the statement didn't</p> <p>15 make sense because patients with symptomatic</p> <p>16 ulcers were, as was defined in the study,</p> <p>17 actually not more likely to experience the</p> <p>18 subsequent ulcer complication.</p> <p>19 This is entirely related to the</p> <p>20 study design and of the way -- with the way</p> <p>21 actually that patients were dealt that had a</p> <p>22 symptomatic ulcer.</p>                                                                                                                                |



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| <p style="text-align: right;">213</p> <p>1 So his point that this could have</p> <p>2 biased results against celecoxib is invalid and</p> <p>3 that's what we're showing.</p> <p>4 Q. And you're purporting to show that</p> <p>5 it's invalid by arguing that you didn't note any</p> <p>6 patients who withdrew for a symptomatic ulcer</p> <p>7 went on to develop an ulcer complication?</p> <p>8 A. Exactly that's how he argues.</p> <p>9 Q. Okay. How could anyone have gone on</p> <p>10 to develop an ulcer complication after being</p> <p>11 withdrawn from the trial?</p> <p>12 A. Do you realize that your argument is</p> <p>13 a tautological one?</p> <p>14 Q. Do you realize that yours is a</p> <p>15 tautological one -- do you understand the</p> <p>16 argument that Dr. Geis is making?</p> <p>17 A. Do you have a medical degree?</p> <p>18 Q. No. I'm asking you.</p> <p>19 A. Do you have a clinical epidemiology</p> <p>20 degree?</p> <p>21 Q. Let's get something straight here.</p> <p>22 I'm here to ask the question, you're here to</p> | <p style="text-align: right;">215</p> <p>1 doesn't have to find out, perhaps. So basically</p> <p>2 in Geis' argument here is that patients with</p> <p>3 symptomatic ulcers were predominantly depleted</p> <p>4 within the NSAID group.</p> <p>5 BY MR. WEISS:</p> <p>6 Q. Okay. Let's stop for a second. Do</p> <p>7 you believe that that statement is true?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay.</p> <p>10 A. The evidence that we had, the</p> <p>11 statistical tests with it, did not yield</p> <p>12 statistical significant results with the first</p> <p>13 six months or the later six months and that's</p> <p>14 also in line with the FDA reviewers.</p> <p>15 Whether this was the case or not,</p> <p>16 I'm not in a position to tell.</p> <p>17 Q. Okay.</p> <p>18 A. However, it goes on. Since</p> <p>19 symptomatic ulcers are precursors, and that's</p> <p>20 what we get, he suggests in here symptomatic are</p> <p>21 precursors of an event and he suggests that this</p> <p>22 may have biased the trial result.</p>                                                                                                                                               |
| <p style="text-align: right;">214</p> <p>1 answer them.</p> <p>2 A. Okay.</p> <p>3 Q. You volunteered to be here.</p> <p>4 A. That's fine.</p> <p>5 Q. If you don't want to be here, we can</p> <p>6 strike all your testimony.</p> <p>7 A. Okay. Good. So let's continue.</p> <p>8 Q. Okay.</p> <p>9 A. The point is --</p> <p>10 MR. SAHAM: And Josh, you're</p> <p>11 starting to border on badgering the witness.</p> <p>12 Whether he's mine or not, your comment is</p> <p>13 inappropriate.</p> <p>14 MR. WEISS: When the witness is</p> <p>15 asking me questions --</p> <p>16 MR. SAHAM: Ask him questions and</p> <p>17 let him answer them.</p> <p>18 MR. WEISS: Okay. I'm curious how</p> <p>19 you respond when you have a witness starting to</p> <p>20 ask you questions and not responding to your</p> <p>21 questions.</p> <p>22 THE WITNESS: Good. Okay. He</p>                                                                                                                                                                                       | <p style="text-align: right;">216</p> <p>1 Q. Uh-huh.</p> <p>2 A. And if we now look at the analysis,</p> <p>3 we find, well, based on the results we're having,</p> <p>4 on the data we're having, generated from the</p> <p>5 CLASS trial, we do not have any evidence to</p> <p>6 suggest that they are indeed precursors.</p> <p>7 And the reason for that could,</p> <p>8 indeed, be what you are suggesting, that</p> <p>9 patients, when they developed the symptomatic</p> <p>10 ulcer, are withdrawn they changed therapy, which</p> <p>11 is in line with clinical decision making, so they</p> <p>12 did not experience this ulcer complication.</p> <p>13 Q. Right. Right. So then do you</p> <p>14 understand that the thesis that the authors</p> <p>15 offered as a result of that was that those people</p> <p>16 were no longer in the diclofenac arm so they</p> <p>17 could not go on to develop a complicated ulcer</p> <p>18 and that's why the results were divergent?</p> <p>19 MR. SAHAM: Objection to form.</p> <p>20 THE WITNESS: We don't have evidence</p> <p>21 for that. We're just testing the evidence we</p> <p>22 have in the trial. It's just, you know, that's</p> |

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| <p style="text-align: right;">217</p> <p>1 just a black/white hypothesis. There's the<br/> 2 hypothesis (inaudible). I'm testing this and I<br/> 3 don't find evidence. I don't pursue that, after<br/> 4 it --<br/> 5 BY MR. WEISS:<br/> 6 Q. Okay. What I'm asking you is, how<br/> 7 could your test possibly prove or disprove that<br/> 8 theory if the patient had to have been withdrawn<br/> 9 upon developing a symptomatic ulcer?<br/> 10 MR. SAHAM: Objection to form.<br/> 11 Asked and answered.<br/> 12 THE WITNESS: I can only -- I can<br/> 13 only do a test with the data that are available.<br/> 14 Based on the data that are available we don't<br/> 15 find evidence to support Geis's hypothesis.<br/> 16 That's all I'm saying.<br/> 17 I can't prove the negative, but I<br/> 18 don't find evidence to suggest that this point<br/> 19 was right. That's all.<br/> 20 BY MR. WEISS:<br/> 21 Q. Okay. Now, turning to the last page<br/> 22 of your July 12 letter. And the paragraph that</p> | <p style="text-align: right;">219</p> <p>1 its revised version that "Serious<br/> 2 gastrointestinal toxicity such as bleeding,<br/> 3 ulceration, and perforation of the stomach, small<br/> 4 intestine or large intestine, can occur at any<br/> 5 time with or without warning symptoms."<br/> 6 We were -- so we're qualifying what<br/> 7 we mean by change of celecoxib's labeling and for<br/> 8 this qualified statement, what we stipulate here<br/> 9 is true. And if this has to be, you know,<br/> 10 referred to then it's, as I remember it, I would<br/> 11 need to look that up, just go to the<br/> 12 correspondence between the FDA and Pharmacia.<br/> 13 And the point was, indeed, just<br/> 14 related to this serious gastrointestinal<br/> 15 toxicity. There could be other aspects that were<br/> 16 changed in the labeling, but we were qualifying<br/> 17 what we meant with this second part of the<br/> 18 sentence.<br/> 19 BY MR. WEISS:<br/> 20 Q. Uh-huh. But the statement, "The FDA<br/> 21 actually refused to change Celecoxib's labeling,"<br/> 22 that in and of itself is not true, correct?</p> |
| <p style="text-align: right;">218</p> <p>1 begins "Finally, Dr. Geis states that." Do you<br/> 2 see that?<br/> 3 A. No, sorry, I'm lost.<br/> 4 Q. Okay. It is the Page 18 of 25.<br/> 5 A. So -- 18 to 25. Yes.<br/> 6 Q. So in the first full paragraph, the<br/> 7 second paragraph on the page, the second sentence<br/> 8 says, "After considering CLASS' results, the FDA<br/> 9 actually refused to change celecoxib's labeling."<br/> 10 Do you see that?<br/> 11 A. Yes.<br/> 12 Q. That's not a true statement is it?<br/> 13 A. Could you explain what --<br/> 14 Q. Well, the FDA did --<br/> 15 A. -- makes you suggest --<br/> 16 Q. The FDA incorporated data from the<br/> 17 CLASS study into the celecoxib label, did it not?<br/> 18 MR. SAHAM: Objection. Form and<br/> 19 foundation.<br/> 20 THE WITNESS: Okay. So what we're<br/> 21 talking about here and we qualified that<br/> 22 afterwards is that the labeling still states in</p>                                                        | <p style="text-align: right;">220</p> <p>1 MR. SAHAM: Objection. Form and<br/> 2 foundation.<br/> 3 THE WITNESS: And that's your<br/> 4 personal opinion, I disagree with that because<br/> 5 we qualified the statement with the next<br/> 6 (inaudible).<br/> 7 BY MR. WEISS:<br/> 8 Q. Are you aware that the FDA<br/> 9 ultimately included data from the CLASS trial<br/> 10 based on nine months of exposure?<br/> 11 A. Yes. I am aware of that.<br/> 12 Q. Okay. And do you think that<br/> 13 decision was -- strike that.<br/> 14 Do you think that the FDA's decision<br/> 15 to include nine months of data in the label was<br/> 16 misleading?<br/> 17 A. No. I didn't think about that.<br/> 18 Q. Uh-huh. But the nine months is<br/> 19 certainly less than the full study duration,<br/> 20 correct?<br/> 21 A. Exactly.<br/> 22 Q. And the FDA made a determination</p>                                                                                                                                                                                                                                                   |

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| <p style="text-align: right;">221</p> <p>1 that that was an appropriate cut of data to<br/>2 include in the label, correct?<br/>3 A. The nine-month is certainly longer<br/>4 than the six months published, correct.<br/>5 And I'll just need to have a look<br/>6 quickly at Kaplan-Meier estimates to tell you<br/>7 whether they would be there. So here probably.<br/>8 I think the nine months are, you<br/>9 know, debatable. It could be that they're okay.<br/>10 It could be that they are not.<br/>11 We don't have strong statistical<br/>12 evidence to suggest that there is anything more<br/>13 justified than the primary analysis, because all<br/>14 of the interaction tests of treatment effects by<br/>15 time were negative at that time point -- at when<br/>16 we were writing this article.<br/>17 And, again, I wouldn't have any<br/>18 argument against, you know, having the full data<br/>19 disclosed and then having post hoc six-month and<br/>20 nine-month analysis.<br/>21 And based on that just an overall<br/>22 discussion of the results, this would have been</p> | <p style="text-align: right;">223</p> <p>1 can't.<br/>2 Q. Well, let me just -- it's a very<br/>3 simple question which is, do you think it is<br/>4 inappropriate to include less than the full data<br/>5 set in the label?<br/>6 A. It depends on how you qualify your<br/>7 statements.<br/>8 Q. Whose statements?<br/>9 A. The statement -- just the statements<br/>10 that are included in the label. So, if the label<br/>11 indicates the entire problem of the study and<br/>12 what was believed and then you include nine-month<br/>13 data, but you're transparent that there are<br/>14 12-month data available and at 12-months it<br/>15 looked like that, et cetera, I think that's<br/>16 entirely appropriate.<br/>17 If you just refer to nine-months<br/>18 data and then you stop and you're not being<br/>19 transparent about what was available at the time<br/>20 point these analysis were done, then I think it<br/>21 can be problematic. So it depends on the<br/>22 statement that they --</p> |
| <p style="text-align: right;">222</p> <p>1 fine.<br/>2 So, whether or not they were okay<br/>3 with the nine months, I can't tell. In terms of<br/>4 the statistical evidence there was in favor of,<br/>5 you know, this decision or against, they didn't<br/>6 have any strong, in my view any strong evidence<br/>7 in favor of this decision because the<br/>8 interactions were negative.<br/>9 Q. So do you think the FDA was wrong to<br/>10 include nine-month data in the label?<br/>11 MR. SAHAM: Objection to form.<br/>12 THE WITNESS: No. I don't think<br/>13 there was. They did this objective decision and<br/>14 that there were arguments in favor and against.<br/>15 BY MR. WEISS:<br/>16 Q. Do you think it was inappropriate<br/>17 for the FDA to include data in the label which<br/>18 was not consistent with the prespecified trial<br/>19 duration, as you believe?<br/>20 A. I would need to have a look.<br/>21 Perhaps you have this as an exhibit, at the label<br/>22 and then I can answer your question. Before I</p>                                                    | <p style="text-align: right;">224</p> <p>1 Q. So somebody could reasonably make a<br/>2 determination that less than the full data set<br/>3 was the most valid or representative data?<br/>4 THE WITNESS: Can you read that?<br/>5 (Record read.)<br/>6 THE WITNESS: That's the major point<br/>7 here. No, nobody could do that. Why, because<br/>8 the trial was problematic -- the two trials,<br/>9 don't interrupt me, otherwise you have trouble<br/>10 with him. I would like to finish, please.<br/>11 BY MR. WEISS:<br/>12 Q. Yes. But the way this works is I<br/>13 ask questions and you give me answers.<br/>14 A. But you interrupted me.<br/>15 Q. No. But you don't get to answer<br/>16 whatever it is that you feel like saying. You<br/>17 get to answer my question. If you need to<br/>18 elaborate --<br/>19 A. Don't patronize me.<br/>20 MR. SAHAM: Josh, you are badgering<br/>21 the witness. Ask him a question. Give him the<br/>22 right to answer the question, and ask another</p>           |

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| <p>225</p> <p>1 question.</p> <p>2 BY MR. WEISS:</p> <p>3 Q. I asked you a question.</p> <p>4 A. Yes. And then I want to give you an</p> <p>5 answer.</p> <p>6 Q. But you're not giving me an answer.</p> <p>7 And you're not limited to --</p> <p>8 A. You don't like the answer I give</p> <p>9 you.</p> <p>10 Q. You're giving me a speech and it's</p> <p>11 what you want to say, which is not to answer my</p> <p>12 question.</p> <p>13 MR. WEISS: So could you read back</p> <p>14 my question?</p> <p>15 MR. SAHAM: And give him a chance to</p> <p>16 answer it.</p> <p>17 (Record read.)</p> <p>18 THE WITNESS: The answer is no,</p> <p>19 nobody could do that.</p> <p>20 BY MR. WEISS:</p> <p>21 Q. I'm not talking about with respect</p> <p>22 to the CLASS trial per se. I'm talking about any</p>                                                                                                                                                                              | <p>227</p> <p>1 Q. But a clinician or a scientist in</p> <p>2 their judgment could make that determination.</p> <p>3 A. A clinician not, a scientist only</p> <p>4 based on statistical evidence that is valid.</p> <p>5 Q. Okay. Now, you have accused the</p> <p>6 CLASS authors of being misleading, correct?</p> <p>7 A. No. I have accused the manuscript</p> <p>8 of being misleading, the publication.</p> <p>9 Q. I'm sure the manuscript is duly</p> <p>10 offended.</p> <p>11 A. Perhaps.</p> <p>12 Q. You yourself and your coauthors in</p> <p>13 the past have been accused by others of being</p> <p>14 misleading, yes?</p> <p>15 A. You need to be a bit more specific.</p> <p>16 I'm not sure. Well, yes, but we were accused by</p> <p>17 homeopaths that we have a misleading analysis of</p> <p>18 homeopathics.</p> <p>19 Q. Uh-huh.</p> <p>20 A. We were accused by Merck Sharp &amp;</p> <p>21 Dohme to have had a misleading meta-analysis of</p> <p>22 Vioxx on their rofecoxib.</p>    |
| <p>226</p> <p>1 trial in general.</p> <p>2 Somebody could reasonably come to a</p> <p>3 conclusion that less than the full data set would</p> <p>4 be the most representative or valid set of data.</p> <p>5 A. No.</p> <p>6 Q. No. So you could never have a</p> <p>7 circumstance where somebody said, you know what,</p> <p>8 there were tons of confounders which made the,</p> <p>9 you know, last three months of a trial completely</p> <p>10 unrepresentative and not worth analyzing, and in</p> <p>11 my clinical judgment, I don't think they're worth</p> <p>12 looking at?</p> <p>13 MR. SAHAM: Objection to form.</p> <p>14 Incomplete hypothetical.</p> <p>15 THE WITNESS: There are hypothetical</p> <p>16 examples where this could be the case. CLASS is</p> <p>17 not one of these.</p> <p>18 BY MR. WEISS:</p> <p>19 Q. But there are hypothetical examples?</p> <p>20 A. Correct.</p> <p>21 Q. Right. And so a clinician --</p> <p>22 A. False education, for instance.</p> | <p>228</p> <p>1 Q. Uh-huh.</p> <p>2 A. I'm sure there are other examples.</p> <p>3 We take that as part of the scientific debate.</p> <p>4 Q. Uh-huh. Uh-huh. And when those</p> <p>5 people accused you of being misleading, part of</p> <p>6 their criticism was that you didn't include a</p> <p>7 number of studies in your meta-analysis that they</p> <p>8 thought should have been included, correct?</p> <p>9 A. I'm not aware of such an example,</p> <p>10 no.</p> <p>11 Q. Okay.</p> <p>12 A. But, you -- meaning that I'm not</p> <p>13 aware, you would need to point out which what you</p> <p>14 are referring to.</p> <p>15 Q. Well, people --</p> <p>16 A. It could have happened.</p> <p>17 Q. You have been criticized for a lack</p> <p>18 of transparency in the reporting of analyses that</p> <p>19 you did, correct?</p> <p>20 A. That's not the point you made just</p> <p>21 before. But, probably you refer to a lecture</p> <p>22 that was referring to our meta-analysis in The</p> |

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| <p style="text-align: right;">229</p> <p>1 Lancet on rofecoxib.</p> <p>2 Could this be, I'm not sure. I</p> <p>3 don't remember exactly. I would need to see it.</p> <p>4 Q. Well, why don't we start with this.</p> <p>5 <b>MR. WEISS: I'm going to ask</b></p> <p>6 <b>reporter to mark this as Defendants' Exhibit 4.</b></p> <p>7 <b>(Defendants' Exhibit Number 4</b></p> <p>8 <b>marked for identification.)</b></p> <p>9 BY MR. WEISS:</p> <p>10 Q. Dr. Juni, Exhibit 4 is an article</p> <p>11 which I understand was an article published in</p> <p>12 the Lancet and is entitled, "Are the Clinical</p> <p>13 Effects of Homoeopathy Placebo Effects?</p> <p>14 Comparative Study of Placebo-Controlled Trials of</p> <p>15 Homoeopathy and Allopathy."</p> <p>16 Is this an article that you</p> <p>17 coauthored?</p> <p>18 A. This is correct, yes.</p> <p>19 Q. And what was the thesis of this</p> <p>20 article?</p> <p>21 A. Excuse me?</p> <p>22 Q. What was the -- what were you</p>                                                                                                                                                               | <p style="text-align: right;">231</p> <p>1 marked for identification.)</p> <p>2 THE WITNESS: Thank you.</p> <p>3 BY MR. WEISS:</p> <p>4 Q. Now, Defendants' Exhibit 5 is an</p> <p>5 article entitled: "Commentary. Homeopathy and</p> <p>6 The Lancet," by Peter Fisher, who is the director</p> <p>7 of research, Royal London Homeopathy Hospital,</p> <p>8 Great Ormond Street, London, UK.</p> <p>9 Have you seen this document before,</p> <p>10 Dr. Juni?</p> <p>11 A. I don't know. I wouldn't be sure.</p> <p>12 Q. Okay. Now, does this article refer</p> <p>13 to the homeopathy article that you published in</p> <p>14 The Lancet?</p> <p>15 A. Let me just see, a cluster of</p> <p>16 articles. Yes, uh-huh.</p> <p>17 Q. And I think in the first paragraph</p> <p>18 it reads, quote, "The centerpiece was a</p> <p>19 meta-analysis of clinical trials of homeopathy</p> <p>20 compared with clinical trials of allopathy</p> <p>21 (conventional medicine).</p> <p>22 "The first author is Aijing Shang,</p> |
| <p style="text-align: right;">230</p> <p>1 studying, what were you reporting in this</p> <p>2 article?</p> <p>3 A. We analyzed trials of homeopathy and</p> <p>4 conventional medicine and estimated its treatment</p> <p>5 effects across all treatments and conditions in</p> <p>6 trials least likely to be affected by bias. It</p> <p>7 is an entirely comparative study.</p> <p>8 This study has pure, you know, is a</p> <p>9 theoretical study looking at the statement of</p> <p>10 whether homoeopathy may have effect, systematic</p> <p>11 effect from the placebo effect.</p> <p>12 Q. And what did you conclude?</p> <p>13 A. We concluded that biases are present</p> <p>14 in both. Placebo controls of homeopathy and of</p> <p>15 conventional medicine, when we took into account</p> <p>16 these biases there was weak evidence of specific</p> <p>17 aspects of homeopathy over and above the placebo</p> <p>18 effect, but still strong evidence of specific</p> <p>19 effects of conventional interactions.</p> <p>20 MR. WEISS: I'm going to mark this</p> <p>21 as Defendants' Exhibit Number 5.</p> <p>22 (Defendants' Exhibit Number 5</p> | <p style="text-align: right;">232</p> <p>1 but the leader of the research group is Prof.</p> <p>2 Matthias Egger of the Department of Social and</p> <p>3 Preventive Medicine, University of Bern,</p> <p>4 Switzerland." Do you see that?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. And that refers to the article that</p> <p>7 we previously marked?</p> <p>8 A. Correct.</p> <p>9 Q. And you were coauthor?</p> <p>10 A. Indeed.</p> <p>11 Q. Okay. Thank you. I'm going to</p> <p>12 point to the bottom of the first page on the</p> <p>13 right-hand side where the heading is "The</p> <p>14 Meta-Analysis."</p> <p>15 A. Yes.</p> <p>16 Q. Do you see that? And it reads,</p> <p>17 quote "The meta-analysis at the center of the</p> <p>18 controversy is based on 110 placebo-controlled</p> <p>19 clinical trials of homeopathy and 110 clinical</p> <p>20 trials of allopathy (conventional medicine) which</p> <p>21 are said to be matched.</p> <p>22 "These were reduced to 21 trials of</p>                     |

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| <p style="text-align: right;">233</p> <p>1 homeopathy and 9 of conventional medicine of</p> <p>2 'higher quality' and further reduced to 8 and 6</p> <p>3 trials respectively, which were, quote 'larger,</p> <p>4 higher quality,' close quote. The final analysis</p> <p>5 which concluded that, quote 'the clinical effects</p> <p>6 of homeopathy are placebo effects' are based on</p> <p>7 just the eight, quote 'larger, higher quality'</p> <p>8 close quote, clinical trials of homeopathy.</p> <p>9 "The Lancet's press release did not</p> <p>10 mention this, instead giving the impression that</p> <p>11 the conclusions were based on all 110 trials.</p> <p>12 "The criteria for the matching of</p> <p>13 the homeopathy and conventional trials were not</p> <p>14 clearly stated, and it is evident from the</p> <p>15 numbers above that the clinical trials of</p> <p>16 homeopathy and conventional medicine were not as</p> <p>17 claimed, well matched -- the homeopathic trials</p> <p>18 were of generally of better quality," close</p> <p>19 quote. Do you see that, Dr. Juni?</p> <p>20 A. Yes.</p> <p>21 Q. Have you read this criticism before?</p> <p>22 A. I don't think so, no.</p> | <p style="text-align: right;">235</p> <p>1 And I'm quoting from the next</p> <p>2 paragraph, quote "One of the most serious</p> <p>3 criticisms is the complete lack of transparency;</p> <p>4 we have no idea which eight trials were included</p> <p>5 in the final, damning, analysis.</p> <p>6 "The literature references are not</p> <p>7 given, nor any information on the diagnoses,</p> <p>8 numbers of patients, etc., nor can we be deduced</p> <p>9 from the article.</p> <p>10 "Prof. Egger has refused several</p> <p>11 requests to disclose the identity of the eight</p> <p>12 trials. This is not even a matter of scientific</p> <p>13 method, but of that natural justice: the accused</p> <p>14 has the right to know the evidence against him.</p> <p>15 "Meta-analysis should incorporate</p> <p>16 sensitivity analysis. In this case the obvious</p> <p>17 sensitivity analysis is to look at the 21 trials</p> <p>18 of, quote 'higher quality,' particularly since it</p> <p>19 appears at the criterion, quote 'larger' appears</p> <p>20 to have been added retrospectively to a 'higher</p> <p>21 quality.' But the result of this analysis was</p> <p>22 not published."</p> |
| <p style="text-align: right;">234</p> <p>1 Q. Okay. And, in fact. Peter Fisher</p> <p>2 is accusing you of being misleading, is he not?</p> <p>3 A. No. He is accusing The Lancet's</p> <p>4 press release of misleading.</p> <p>5 Q. Uh-huh. And when he talks about the</p> <p>6 criteria for the matching of the homeopathic and</p> <p>7 conventional trials, the fact they were not</p> <p>8 clearly stated and the fact that the trials were</p> <p>9 not generally of better quality, you don't</p> <p>10 construe that as a criticism of you or an</p> <p>11 accusation that you're being misleading?</p> <p>12 MR. SAHAM: Objection to form.</p> <p>13 THE WITNESS: Indeed I do. But we</p> <p>14 were in line with our methodology. We were</p> <p>15 transparent and we didn't match for quality. So</p> <p>16 everything was in line there. And we</p> <p>17 transparently as specified in the methods.</p> <p>18 BY MR. WEISS:</p> <p>19 Q. Okay. Well, moving onto the next</p> <p>20 section on the second page, it says</p> <p>21 "Transparency, Sensitivity and External</p> <p>22 Validity."</p>                                                                                                    | <p style="text-align: right;">236</p> <p>1 Do you see that, Dr. Juni?</p> <p>2 A. Sorry, but the results of this</p> <p>3 analysis was not published. Yes, I see that.</p> <p>4 Q. You see that. And, of course, Peter</p> <p>5 Fisher is accusing you of a lack of transparency,</p> <p>6 correct?</p> <p>7 A. And we addressed that, but -- well,</p> <p>8 first of all, I'm not able to talk about the</p> <p>9 contact Peter Fisher had with Matthias Egger. So</p> <p>10 I am not able to talk about that.</p> <p>11 Q. I haven't asked you about that.</p> <p>12 A. I know that as a reaction of several</p> <p>13 reactions we had from homeopaths, that we posted</p> <p>14 additional material on our institute's website.</p> <p>15 Q. Uh-huh.</p> <p>16 A. And I'm currently not in a position</p> <p>17 to indicate what the level of detail was, I</p> <p>18 forgot. I was involved in that, but we would</p> <p>19 need to look into that.</p> <p>20 Q. Right. But when you wrote that</p> <p>21 article, you made the decision about what</p> <p>22 information to disclose and what information not</p>                                                                                    |



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| <p style="text-align: right;">237</p> <p>1 to disclose, correct?</p> <p>2 MR. SAHAM: Objection to form.</p> <p>3 THE WITNESS: In a meta-analysis,</p> <p>4 yes, because we have restricted space.</p> <p>5 BY MR. WEISS:</p> <p>6 Q. Okay. But you made a decision about</p> <p>7 what information you were going to disclose to</p> <p>8 the public and what information you were not</p> <p>9 going to disclose about the methodology of your</p> <p>10 analysis?</p> <p>11 A. Not about the methodology, but about</p> <p>12 the identity of the trials included.</p> <p>13 Q. Okay.</p> <p>14 A. We did that in a subsequent opinion.</p> <p>15 Q. And people thought that your failure</p> <p>16 to do so was misleading, correct?</p> <p>17 MR. SAHAM: Objection to form.</p> <p>18 THE WITNESS: Amid homeopaths.</p> <p>19 BY MR. WEISS:</p> <p>20 Q. Right. And you don't agree with</p> <p>21 them, correct?</p> <p>22 A. No, I think it's a fair comment that</p>              | <p style="text-align: right;">239</p> <p>1 Q. In the second paragraph under the</p> <p>2 heading "Transparency, Sensitivity and External</p> <p>3 Validity," do I correctly read Peter Fisher's</p> <p>4 criticism to indicate that you added</p> <p>5 retrospectively criteria to your analysis?</p> <p>6 A. Where is this, can you read it,</p> <p>7 please.</p> <p>8 MR. SAHAM: Objection to form.</p> <p>9 BY MR. WEISS:</p> <p>10 Q. I'm reading it, quote,</p> <p>11 "Meta-analysis should incorporate sensitivity</p> <p>12 analysis. In this case the obvious sensitivity</p> <p>13 analysis is to look at the 21 trials of, quote</p> <p>14 'higher quality,' particularly since it appears</p> <p>15 that the criterion, quote, 'larger' appears to</p> <p>16 have been added retrospectively to, quote 'higher</p> <p>17 quality.' But the results of this analysis was</p> <p>18 not published." Do you see that?</p> <p>19 A. I see that, yes.</p> <p>20 Q. And he's accusing you of adding,</p> <p>21 retrospectively adding criteria to your analysis?</p> <p>22 A. Yes. Which I'm -- which I'm sure we</p> |
| <p style="text-align: right;">238</p> <p>1 they want more transparency and that's part of</p> <p>2 the scientific debate. And I would need to look,</p> <p>3 or we would need to look and we can also do that</p> <p>4 now, what is probably still posted on our</p> <p>5 website.</p> <p>6 I think that we actually have</p> <p>7 posted, have disclosed just the full details of</p> <p>8 the trials. But, I wouldn't be sure.</p> <p>9 Q. But, that was -- you disclosed those</p> <p>10 details only after you published the article,</p> <p>11 correct?</p> <p>12 A. Indeed, yes.</p> <p>13 Q. Okay. And when you failed to</p> <p>14 disclose those details when you wrote the</p> <p>15 article, was it your intention to be misleading?</p> <p>16 A. No.</p> <p>17 Q. Okay. And --</p> <p>18 A. That's not a randomized trial,</p> <p>19 though.</p> <p>20 Q. Oh, okay. Okay. One more question</p> <p>21 and then we'll take a break to change the tape.</p> <p>22 A. Okay.</p> | <p style="text-align: right;">240</p> <p>1 didn't.</p> <p>2 Q. You're sure that you didn't?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So he's wrong?</p> <p>5 A. He's wrong, yes.</p> <p>6 Q. He is just wrong.</p> <p>7 MR. WEISS: All right. Let's change</p> <p>8 the tape.</p> <p>9 THE VIDEOGRAPHER: Off the record at</p> <p>10 2:39 p.m.</p> <p>11 (Recess -- 2:39-3:14 p.m.)</p> <p>12 THE VIDEOGRAPHER: This is the</p> <p>13 beginning of Tape Number 4. Back on the record</p> <p>14 at 3:14 p.m.</p> <p>15 BY MR. WEISS:</p> <p>16 Q. Dr. Juni, where we last left off, we</p> <p>17 were discussing <u>Exhibit 5</u> and I'd like to go back</p> <p>18 to <u>Exhibit 5</u> and I'd like you to look on the</p> <p>19 second page of <u>Exhibit 5</u>, there's a heading</p> <p>20 "Upper Respiratory Tract Infections." Do you see</p> <p>21 that?</p> <p>22 A. Uh-huh.</p>                                                                                                                                                                                                                                          |

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| <p style="text-align: right;">241</p> <p>1 Q. Okay. And then the second paragraph</p> <p>2 of that, under that heading reads, quote, "But</p> <p>3 perhaps the most single telling criticism of this</p> <p>4 meta-analysis is that it fails, on multiple</p> <p>5 accounts, to meet the generally accepted</p> <p>6 standards for meta-analysis, the QUORUM statement</p> <p>7 (Quality of Reports of Meta-Analyses of</p> <p>8 Randomized Closed Trials), published in The</p> <p>9 Lancet itself in 1999 (12). The main failings</p> <p>10 are those outlined above although there are</p> <p>11 others." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Are you familiar with the QUORUM</p> <p>14 statement which was published in The Lancet in</p> <p>15 1999?</p> <p>16 A. Indeed I am.</p> <p>17 Q. And do you endeavor to follow the</p> <p>18 generally accepted standards as set forth in</p> <p>19 QUORUM in publishing your meta-analyses?</p> <p>20 A. Yes, we do.</p> <p>21 Q. Okay.</p> <p>22 A. So I assume here he was referring</p> | <p style="text-align: right;">243</p> <p>1 testimony you testified that one of your</p> <p>2 criticisms of the JAMA article was that it didn't</p> <p>3 follow internationally-accepted standards for</p> <p>4 publishing clinical trials, is that fair?</p> <p>5 A. Indeed, yes.</p> <p>6 Q. And that's exactly what you're being</p> <p>7 accused of doing in connection with your -- with</p> <p>8 <u>Exhibit 4</u>, which was your homeopathic study.</p> <p>9 A. Indeed we were accused by a</p> <p>10 homeopath not to follow international accepted</p> <p>11 standards. I think we followed them by 90,</p> <p>12 95 percent, made certainly a mistake with this</p> <p>13 one.</p> <p>14 My point of view is that the</p> <p>15 dimension, you know, of their mission is</p> <p>16 different. But, again, that's a matter of debate</p> <p>17 and different people will look at it differently.</p> <p>18 Q. Okay. Do you think that Paul Fisher</p> <p>19 was wrong in his accusation that you didn't</p> <p>20 follow the QUORUM standards?</p> <p>21 A. Well, he was wrong that we didn't</p> <p>22 follow, because I know we followed, but we didn't</p> |
| <p style="text-align: right;">242</p> <p>1 mainly to the tabulation of individual trials</p> <p>2 that in the first place didn't make it into the</p> <p>3 paper.</p> <p>4 That we then subsequently, and I</p> <p>5 fully agreed that this was a mistake,</p> <p>6 subsequently only published on our institute's</p> <p>7 website.</p> <p>8 Now, what I can't tell you is how</p> <p>9 the process went there, whether we initially</p> <p>10 submitted it but they decided not to publish it</p> <p>11 as a web appendix, or whether we didn't, whether</p> <p>12 we failed to submit, you know, the individual</p> <p>13 trial details.</p> <p>14 Q. Uh-huh.</p> <p>15 A. Whether he refers to anything else,</p> <p>16 I can't see, because if I look at the other</p> <p>17 comments, they don't refer to the QUORUM</p> <p>18 statement. So I think it's mainly this, what I</p> <p>19 just stated.</p> <p>20 Q. Okay.</p> <p>21 A. The trials.</p> <p>22 Q. And I think earlier in your</p>                                                      | <p style="text-align: right;">244</p> <p>1 fully satisfy it.</p> <p>2 Q. Do you think you could have a</p> <p>3 legitimate difference of opinion with Mr. Fisher</p> <p>4 about whether or not you, in fact, followed the</p> <p>5 QUORUM standards?</p> <p>6 A. I would need to look at the QUORUM</p> <p>7 statement now to determine how it was at that</p> <p>8 time. The statement has now been updated and is</p> <p>9 different and I only have this in mind.</p> <p>10 So I would need to look at it, but</p> <p>11 probably I would agree with him that we failed to</p> <p>12 include references of individual trials.</p> <p>13 Q. Okay.</p> <p>14 A. And he made that up afterwards. He</p> <p>15 corrected that.</p> <p>16 Q. Okay. Did your failure to include</p> <p>17 those references to other trials and your failure</p> <p>18 to comply with the QUORUM statements render your</p> <p>19 article on homeopathy misleading?</p> <p>20 A. No. Not in my view.</p> <p>21 Q. In Mr. Fisher's view was it</p> <p>22 misleading?</p>                                                                                                                   |

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| <p style="text-align: right;">245</p> <p>1 MR. SAHAM: Objection to form.<br/> 2 THE WITNESS: In Mr. Fisher's view,<br/> 3 being a homeopath and not liking the results,<br/> 4 this matter now is, per se, is misleading.<br/> 5 BY MR. WEISS:<br/> 6 Q. So you think that Mr. Fisher's<br/> 7 criticisms were motivated by his status as a<br/> 8 homeopath?<br/> 9 MR. SAHAM: Objection to form.<br/> 10 THE WITNESS: I don't know. I can't<br/> 11 read minds, but it would, you know, we were<br/> 12 hassled at that time by many homeopaths,<br/> 13 including him, apparently.<br/> 14 And things got very personal<br/> 15 sometimes and we -- I've sort of given up a bit<br/> 16 just on this debate there, just because things<br/> 17 got very personal.<br/> 18 So there was a lot of well, contra<br/> 19 (ph.), I think that's an English term as well,<br/> 20 coming into that, and I couldn't tell how Peter<br/> 21 Fisher actually was coming to his conclusion.<br/> 22 BY MR. SAHAM:</p>                                                                    | <p style="text-align: right;">247</p> <p>1 they are coming and whether they are consistent<br/> 2 criticisms.<br/> 3 There were additional criticisms<br/> 4 about this article that you published in Lancet<br/> 5 about homeopathy, correct?<br/> 6 Fisher wasn't the only one?<br/> 7 A. No. Fisher wasn't the only one.<br/> 8 But I wouldn't say that 15 published comments<br/> 9 overall mainly by homeopaths indicates that the<br/> 10 field is consistently criticizing.<br/> 11 Q. Okay. And that would hold true even<br/> 12 if the criticisms were of the same nature?<br/> 13 MR. SAHAM: Objection to form.<br/> 14 THE WITNESS: I don't know. It<br/> 15 depends on what the criticisms are. If they<br/> 16 asked this one, you know, that was referring to<br/> 17 the identity of these 110 trials, that's a valid<br/> 18 criticism, can be addressed and dealt with it<br/> 19 subsequently.<br/> 20 BY MR. WEISS:<br/> 21 Q. Okay.<br/> 22 A. Research is never perfect. And, you</p> |
| <p style="text-align: right;">246</p> <p>1 Q. Do you think that the criticisms are<br/> 2 less valid by virtue of the fact that they come<br/> 3 from a homeopath?<br/> 4 A. No, not the criticisms. But I think<br/> 5 you can -- you can qualify a bit criticisms from<br/> 6 where they're coming and whether they are<br/> 7 consistent criticisms, et cetera, or not and<br/> 8 that's always the case.<br/> 9 And this is -- this should be, you<br/> 10 know, criticisms should trigger scientific<br/> 11 debate. And this was the case here with, you<br/> 12 know, with a formal commentary, that's fine.<br/> 13 Some of them were also very, you<br/> 14 know, informal and difficult, that's what we like<br/> 15 less. So that's fair enough. He makes his<br/> 16 points, we tried to amend some parts, that's it.<br/> 17 Q. Okay. And so you think that his<br/> 18 criticism represents an aspect of scientific<br/> 19 debate?<br/> 20 A. I think so.<br/> 21 Q. Okay. And you said that -- you said<br/> 22 I think you can qualify criticisms from where</p> | <p style="text-align: right;">248</p> <p>1 know, it's always difficult, and being a trialist<br/> 2 myself, I know how difficult it is to perform<br/> 3 trials.<br/> 4 Q. Uh-huh.<br/> 5 MR. WEISS: These are organized<br/> 6 different than I had them originally. Let's mark<br/> 7 this as Defendants' Exhibit 6.<br/> 8 (Defendants' Exhibit Number 6<br/> 9 marked for identification.)<br/> 10 BY MR. WEISS:<br/> 11 Q. Exhibit 6 is a series of letters<br/> 12 which were, as I understand it published in<br/> 13 Lancet, December 17th, 2005.<br/> 14 The title under which these letters<br/> 15 appear are "Are The Clinical Effects of<br/> 16 homeopathy Placebo Effects"?<br/> 17 Dr. Juni, I will ask you to refer to<br/> 18 the first letter which is authored by Harald<br/> 19 Walach, Wayne Jonas and George Lewith, you see<br/> 20 that?<br/> 21 A. Yes.<br/> 22 Q. And the first paragraph of that</p>                                                                            |

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| <p style="text-align: right;">249</p> <p>1 letter says: "Aijing Shang and colleagues show<br/>2 that a small-study bias pervades all clinical<br/>3 research. They suggest that, for homeopathy,<br/>4 this observation is a mortal blow because the<br/>5 combined odds ratios of the largest homeopathy<br/>6 trials converged to zero. We believe that there<br/>7 are some flaws in this argument." Do you see<br/>8 that?<br/>9 A. Yes.<br/>10 Q. Is that referring to the article<br/>11 that we previously marked as Defendants'<br/>12 Exhibit 4?<br/>13 A. Correct.<br/>14 Q. Okay. And I'm going to read from<br/>15 the next paragraph which says, quote "First, the<br/>16 argument hinges on the fact that the studies<br/>17 chosen are representative of homeopathy in<br/>18 practice and therefore externally valid.<br/>19 "As far as we are aware, none of the<br/>20 studies assess individualized classic homeopathy<br/>21 as commonly practiced in the UK and Europe.<br/>22 However, Shang and colleagues have</p> | <p style="text-align: right;">251</p> <p>1 point. I have an understanding of what they<br/>2 mean, I don't think they have a point.<br/>3 Q. Okay. What do you understand that<br/>4 they mean?<br/>5 A. I think they mean that these set<br/>6 trials are evaluating interventions that have<br/>7 gone through rigorous clinical testing, you know,<br/>8 through admission processes -- approval<br/>9 processes, et cetera and that they're referring<br/>10 to that.<br/>11 Q. Okay. Are they essentially saying<br/>12 that you are purposefully picked trials because<br/>13 you knew that they would lead to a particular<br/>14 result?<br/>15 A. No. They're not saying that.<br/>16 Q. Okay.<br/>17 A. They say the trials are highly<br/>18 selected because of the nature of their clinical<br/>19 interventions, the conventional interventions<br/>20 that they actually addressed.<br/>21 Q. Uh-huh. But you don't think that<br/>22 that is what they're saying here is that you</p> |
| <p style="text-align: right;">250</p> <p>1 not disclosed details of the eight largest<br/>2 homeopathic studies." Do you see that?<br/>3 A. Yes.<br/>4 Q. And is that consistent with the<br/>5 criticism that Mr. Fisher offered about your<br/>6 failure to disclose details of the trials that<br/>7 you considered in your analysis?<br/>8 A. Correct.<br/>9 Q. Okay. And the second paragraph, or<br/>10 the next paragraph reads, quote: "Second, the<br/>11 six studies of conventional interventions are, by<br/>12 comparison, highly selected," close quote.<br/>13 Do you have any understanding of<br/>14 what the authors mean by highly selected?<br/>15 MR. SAHAM: Objection to form.<br/>16 THE WITNESS: I'm just reading it,<br/>17 sorry.<br/>18 BY MR. SAHAM:<br/>19 Q. Sure. Sure. Sure.<br/>20 A. Well, the answer is no. And I know<br/>21 how we selected them and -- well, I know what<br/>22 they mean, but I don't think that they have a</p>                                                                    | <p style="text-align: right;">252</p> <p>1 chose trials because you wanted to achieve a<br/>2 particular result and you knew those trials would<br/>3 help you get there?<br/>4 A. I don't think that they're saying<br/>5 that.<br/>6 Q. Okay.<br/>7 A. No.<br/>8 Q. Okay.<br/>9 A. Incidentally, I know many of these<br/>10 people here personally pretty well and we<br/>11 discussed quite a lot of these criticisms with<br/>12 them and I know Walach, I know Klaus Linde on the<br/>13 next page, quite well, and I consider Klaus Linde<br/>14 even a friend, and this is part of the scientific<br/>15 debate that's going on.<br/>16 Q. Hmm.<br/>17 A. Also something which is important<br/>18 is, and this was a mistake, that this was not<br/>19 part of the abstract, it's only in the text.<br/>20 We did two different types of<br/>21 analysis to address small study effects, okay.<br/>22 One is the restriction to large trials of higher</p>                                   |

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| <p style="text-align: right;">253</p> <p>1 quality and the other is that we modeled the<br/>2 effect based on all 110 trials.<br/>3 So we included all of the 110 trials<br/>4 in the analysis and based on that we developed a<br/>5 statistical model to estimate the effects in<br/>6 large scale trials.<br/>7 Q. Uh-huh.<br/>8 A. So we did both.<br/>9 Q. Uh-huh.<br/>10 A. And that if these documents that are<br/>11 coming up, they all consistently were interest,<br/>12 you know, dealing with these eight and six trials<br/>13 and that's it. And we were rather unhappy about<br/>14 our decision at that time, you know, we were<br/>15 smarter afterwards not to include the modeled<br/>16 effects also in the abstract.<br/>17 Q. Okay.<br/>18 A. That's the scientists.<br/>19 Q. Okay. And then the next letter,<br/>20 which I think you reference was for Klaus Linde<br/>21 and Wayne Jonas.<br/>22 A. Uh-huh.</p>                                                                                | <p style="text-align: right;">255</p> <p>1 clearly requires that meta-analyses 'present<br/>2 descriptive data for each trial' and 'data needed<br/>3 to calculate effect sizes and confidence<br/>4 intervals,'" close quote.<br/>5 Is that consistent with your<br/>6 understanding of what the QUORUM statement<br/>7 requires?<br/>8 A. Yes, indeed. Now it depends on<br/>9 whether you considered this part here as a<br/>10 clinical meta-analysis or not.<br/>11 The QUORUM statement was established<br/>12 for clinical meta-analyses and not for the<br/>13 purpose we did here.<br/>14 So the sheer volume of data made it<br/>15 at the time made it quite difficult, even though<br/>16 I agree, it should have been more transparent and<br/>17 we compensated for that subsequently.<br/>18 Q. So when these people are criticizing<br/>19 you, they're just wrong?<br/>20 A. No. I was indicating that they are<br/>21 not wrong, that's fine, fair enough. That's<br/>22 research and you can get better.</p> |
| <p style="text-align: right;">254</p> <p>1 Q. I'll point you to the middle of the<br/>2 first paragraph, which is the third column on the<br/>3 first page and it reads "However, there are major<br/>4 problems with the way Shang and colleagues<br/>5 present and discuss their results as well as how<br/>6 The Lancet reviewed and interpreted this study We<br/>7 will point out two.<br/>8 "First, Shang and colleagues do not<br/>9 follow accepted and published guidelines for<br/>10 representing meta-analyses." Do you see that?<br/>11 A. Yes.<br/>12 Q. Is that consistent with the<br/>13 criticism that was offered by Mr. Fisher in the<br/>14 previous document we looked at?<br/>15 A. Yes. With the criticism I<br/>16 acknowledged to be correct that we amended<br/>17 afterwards, yes.<br/>18 Q. Okay.<br/>19 A. Addressed and amended.<br/>20 Q. Right. And then they reference the<br/>21 QUORUM statement and then going down a few<br/>22 sentences, it reads, quote "The QUORUM statement</p> | <p style="text-align: right;">256</p> <p>1 Q. Okay. Fair enough. It goes on to<br/>2 say quote, "Shang and colleagues do not report<br/>3 the trials excluded from the review, the quality<br/>4 assessments and odds ratios of all trials<br/>5 included in the review, nor which eight trials<br/>6 were included in the final metaanalysis.<br/>7 "This lack of detail is unacceptable<br/>8 on a paper drawing a strong clinical conclusion,"<br/>9 close quote. Do you see that?<br/>10 A. Yes. I see it.<br/>11 Q. Do you agree that the lack of detail<br/>12 that is described there is unacceptable in a<br/>13 paper drawing such as strong conclusion?<br/>14 A. A strong clinical conclusion.<br/>15 Q. Yes.<br/>16 A. I don't agree on that, because we<br/>17 didn't draw any clinical conclusions. So I don't<br/>18 agree on the statement on the strong clinical<br/>19 conclusions.<br/>20 Q. Okay.<br/>21 A. And again, you know, to have a web<br/>22 appendix which includes the state of what we</p>      |

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| <p style="text-align: right;">257</p> <p>1 subsequently did, as far as I remember that</p> <p>2 correctly, and you may have as an additional</p> <p>3 exhibit our response to that, that we could check</p> <p>4 actually what we did exactly and how we argued</p> <p>5 there.</p> <p>6 Q. Uh-huh. Uh-huh. Uh-huh.</p> <p>7 A. And just, you know, to specify that,</p> <p>8 then correct and just show all of the data,</p> <p>9 that's fair enough. The point is none of these</p> <p>10 omissions will change any of the results we made.</p> <p>11 So the results -- first of all, the</p> <p>12 analysis were still according to the protocol we</p> <p>13 submitted to the Swiss government when this</p> <p>14 analysis actually was set up, was planned,</p> <p>15 actually, and none of the criticisms that were</p> <p>16 brought up changed anything in terms of the</p> <p>17 results.</p> <p>18 And there wasn't, you know, just an</p> <p>19 additional analytical approach that we should</p> <p>20 have made that we didn't report that showed</p> <p>21 different results. This wasn't the case.</p> <p>22 Q. So just because Dr. Linde, I think</p> | <p style="text-align: right;">259</p> <p>1 is in here.</p> <p>2 But, again, I stipulate</p> <p>3 repetitively, we tried to address it by providing</p> <p>4 additional information.</p> <p>5 Q. Okay. So the fact that -- well,</p> <p>6 strike that.</p> <p>7 Klaus Linde's opinion that what you</p> <p>8 did was unacceptable was nothing more than his</p> <p>9 opinion, am I right?</p> <p>10 A. No. He has a point that we</p> <p>11 addressed.</p> <p>12 Q. Uh-huh.</p> <p>13 A. Now, you know, the statement or the</p> <p>14 qualifying term unacceptable or, you know, the</p> <p>15 choices of using, you know, a term like</p> <p>16 unacceptable or using a different term, I think</p> <p>17 that's his subjective choice.</p> <p>18 Q. Uh-huh.</p> <p>19 A. The problem he brings up is an issue</p> <p>20 and we tried to address it.</p> <p>21 Q. Okay. Now, if you turn to the next</p> <p>22 page.</p>                                                                                                                                                                                           |
| <p style="text-align: right;">258</p> <p>1 who you described as relatively eminent and well</p> <p>2 regarded, says that something that you did was</p> <p>3 unacceptable, that doesn't make it so, does it?</p> <p>4 MR. SAHAM: Objection to form.</p> <p>5 THE WITNESS: Well, I didn't say</p> <p>6 it's -- let me, see where does it say that?</p> <p>7 BY MR. WEISS:</p> <p>8 Q. Where does it say what?</p> <p>9 A. The term unacceptable, I would like</p> <p>10 you to --</p> <p>11 Q. If you look at the third column.</p> <p>12 A. Yes. That's fine.</p> <p>13 Q. If you look at the last sentence,</p> <p>14 before the last paragraph.</p> <p>15 A. "This lack of detail is unacceptable</p> <p>16 in a paper drawing a strong clinical conclusion."</p> <p>17 So the point I'm making there is</p> <p>18 that from our point of view this wasn't about the</p> <p>19 strong clinical conclusion, that's it.</p> <p>20 And if Klaus Linde is indicating</p> <p>21 that, and again -- well, it depends on the</p> <p>22 perspective, how acceptable or unacceptable this</p>                                                                                 | <p style="text-align: right;">260</p> <p>1 A. Yes.</p> <p>2 Q. I'll see if I can follow. There's</p> <p>3 another letter and this one is authored again by</p> <p>4 Peter Fisher, Brian Berman, Jonathan Davidson,</p> <p>5 David Reilly, Trevor Thompson on behalf of 29</p> <p>6 other signatures.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And I'm going to read you</p> <p>9 from the top of the second column on the second</p> <p>10 page and it says, quote "We wish to raise</p> <p>11 concerns about the meta-analysis of homeopathy by</p> <p>12 Aijing Shang and colleagues. It is based on 110</p> <p>13 trials of homeopathy and 110 of conventional</p> <p>14 medicine, which are said to be matched although</p> <p>15 the criteria are not clearly stated.</p> <p>16 "They were not well matched for at</p> <p>17 least one crucial parameter--trial quality--which</p> <p>18 was higher for the homeopathy studies.</p> <p>19 "The conclusion that, quote 'the</p> <p>20 clinical effects of homeopathy are placebo</p> <p>21 effects' is based on only eight, anonymous,</p> <p>22 clinical trials.</p> |



Peter Juni

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| <p style="text-align: right;">261</p> <p>1 "These studies are not referenced<br/>2 and no information is given about them. The<br/>3 quality criteria are standard measures of<br/>4 internal validity, but before reaching their<br/>5 conclusion, Shang and colleagues added a further<br/>6 criterion--study size." Do you see that?<br/>7 A. Yes.<br/>8 Q. Is that true that after -- before<br/>9 reaching your conclusion, you and your colleagues<br/>10 added a further criteria to the analysis?<br/>11 A. In my opinion, no. We -- our forum<br/>12 actually defined the study size, you know, as one<br/>13 of the issues to look at.<br/>14 Q. Uh-huh.<br/>15 A. Which also makes sense, you know,<br/>16 knowing that the final plots, the plots you're<br/>17 seeing in Exhibit --<br/>18 Q. Four.<br/>19 A. -- four, Figure 2, that's the final<br/>20 plot looking at the association of effect size<br/>21 versus study size. This final plot was mainly<br/>22 introduced in the medical literature by the</p> | <p style="text-align: right;">263</p> <p>1 this information from.<br/>2 Q. Uh-huh. But you didn't --<br/>3 A. And I would like to -- and I would<br/>4 like to have a look because I can't remember that<br/>5 exactly. I would like to have a look at our<br/>6 reply to, you know, to further qualify my<br/>7 statements and to amend my memory.<br/>8 If you -- if we wanted to pursue<br/>9 that more specifically, we would need to look at<br/>10 our reply.<br/>11 Q. Right. Okay. The next paragraph<br/>12 down, or the last sentence of that paragraph<br/>13 says, quote "The opacity of this paper means that<br/>14 it fails a key test of a good scientific report;<br/>15 that the reader should, in principle, be able to<br/>16 reproduce it." Do you see that?<br/>17 A. Yes.<br/>18 Q. Do you agree with that criticism?<br/>19 A. Again, yes, I do, because we didn't<br/>20 include the web appendix with the trials.<br/>21 Q. Okay. And do you think that your<br/>22 failure to include the web appendix with the</p> |
| <p style="text-align: right;">262</p> <p>1 senior author of this paper.<br/>2 Q. Uh-huh.<br/>3 A. And that is something we routinely<br/>4 do and our institute routinely has been doing<br/>5 since actually my colleague, M. Becker and I came<br/>6 to Bern in 2002, again from Bristol.<br/>7 So that's why we were able to<br/>8 perform meta-analysis.<br/>9 Q. Okay.<br/>10 A. Now, if we wanted to know<br/>11 specifically, we would need to look into, you<br/>12 know, the protocol that was submitted to the<br/>13 Swiss government, but to a high degree of<br/>14 certainty, I'm convinced that we have actually<br/>15 included this criterion in a prespecified manner.<br/>16 Q. So, again, Mr. Fisher is just wrong?<br/>17 A. Well, again, does he cite where he<br/>18 has the information from. I mean, there was the<br/>19 protocol just submitted to the Swiss government.<br/>20 That's it.<br/>21 Q. Uh-huh.<br/>22 A. So -- and I'm not sure where he has</p>                                        | <p style="text-align: right;">264</p> <p>1 trials rendered your paper misleading?<br/>2 A. No.<br/>3 Q. Okay. The next paragraph reads,<br/>4 quote "We also have some concerns about the<br/>5 literature review; some studies seem to have been<br/>6 inappropriately included and excluded, although<br/>7 the lack of clarity in the paper makes it<br/>8 impossible to be certain." Do you see that?<br/>9 A. I see that, yes.<br/>10 Q. Okay. When you do an analysis of<br/>11 the type that's represented in Defendants'<br/>12 Exhibit 4, the trialists or the study authors<br/>13 have to exercise their judgment about which<br/>14 trials to include and which trials not to<br/>15 include, correct?<br/>16 A. Indeed.<br/>17 Q. And, in doing the study that is<br/>18 reflected in Defendants' Exhibit 4, you and your<br/>19 colleagues exercise your judgment about what<br/>20 trials to include and not to include in your<br/>21 analysis?<br/>22 A. Correct. Yes.</p>                                                    |

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| <p style="text-align: right;">265</p> <p>1 Q. And then when you published a paper<br/>2 about the results, you didn't disclose which<br/>3 trials you had decided to include and which<br/>4 trials you had decided to exclude, correct?<br/>5 A. We didn't disclose with reference,<br/>6 which is as a matter of fact something which is<br/>7 very common just in standard mainstream papers.<br/>8 So it's different if you look at the<br/>9 reviews of the Cochrane Collaboration, you know,<br/>10 where they have extensive space, up to 80, 90<br/>11 pages or so.<br/>12 But it's quite common that these<br/>13 exclusions are not, you know, referred to with<br/>14 references. So we will find many of these and I<br/>15 don't think that this comment is, you know,<br/>16 particularly a worrying one.<br/>17 Q. Okay. Well, do you, you know, all<br/>18 of the authors -- well, strike that.<br/>19 All of the commentary that we<br/>20 referred to didn't seem to think that your<br/>21 failure to include those citations was so<br/>22 standard, did they?</p> | <p style="text-align: right;">267</p> <p>1 like to know, we would need to have -- to have a<br/>2 systematic review on that the methodological<br/>3 study.<br/>4 And I'm rather convinced that it<br/>5 would not be established as standard, that's the<br/>6 exception. And so to speak they criticize it,<br/>7 that's fair enough, but I wouldn't consider this<br/>8 to be a standard.<br/>9 BY MR. WEISS:<br/>10 Q. Uh-huh.<br/>11 A. And I think it is important to keep<br/>12 in mind there that, you know, our institute in<br/>13 Bern, who did -- who was in charge, you know, of<br/>14 coordinating this meta-analysis has an<br/>15 international reputation in systematic review.<br/>16 So we know pretty well how to do or<br/>17 how not to do things. Nobody is perfect. There<br/>18 were omissions in that, but now this particular<br/>19 omission that you were referring to would not be<br/>20 considered as a standard.<br/>21 Q. Uh-huh. Okay. Well, do you think<br/>22 all of these people, who criticized your failure</p> |
| <p style="text-align: right;">266</p> <p>1 MR. SAHAM: Objection to form.<br/>2 THE WITNESS: Well, they criticized<br/>3 this indeed and if you want know how standard it<br/>4 is, you would need to do a quality assessment of,<br/>5 you know, of systematic views published at that<br/>6 time.<br/>7 And then my educated guess would be<br/>8 that very few of the paper-based systematic<br/>9 reviews would provide references for the papers<br/>10 that are being excluded. This would be to --<br/>11 this would be very rare to find.<br/>12 BY MR. WEISS:<br/>13 Q. Uh-huh. So, then, for example,<br/>14 Peter Fisher, Brian Berman, Jonathan Davidson<br/>15 David Reilly, Trevor Thompson on behalf of 29<br/>16 other signatories, all of those people just don't<br/>17 have any understanding of how standard of a<br/>18 practice that actually is?<br/>19 MR. SAHAM: Objection to form.<br/>20 THE WITNESS: I can't judge their<br/>21 understanding of things. I see what they write<br/>22 and this, you know, that's, you know, if we would</p>                 | <p style="text-align: right;">268</p> <p>1 to include those references thought that it was<br/>2 standard to not include references, they would<br/>3 have written these commentaries to The Lancet?<br/>4 MR. SAHAM: Objection to the form.<br/>5 THE WITNESS: I'm not in a position<br/>6 to read their minds. And I'm not -- I wasn't<br/>7 there when it was decided to actually what was on<br/>8 the paper or not.<br/>9 BY MR. WEISS:<br/>10 Q. Okay. Okay. The next letter is<br/>11 from Flavio Dantas.<br/>12 A. Where do I have that?<br/>13 Q. Maybe that is not included in yours.<br/>14 Let me see if I have the next one.<br/>15 MR. WEISS: Please mark this one<br/>16 separately as Defendants' <u>Exhibit 7</u>.<br/>17 (Defendants' <u>Exhibit Number 7</u><br/>18 marked for identification.)<br/>19 BY MR. WEISS:<br/>20 Q. So we're now at Defendants'<br/>21 <u>Exhibit 7</u>, which is another letter that was<br/>22 published in Lancet and it is from a gentleman by</p>                                                       |

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| <p style="text-align: right;">269</p> <p>1 the name of Flavio Dantas.</p> <p>2 And I will direct your attention to</p> <p>3 the top of the second column where it reads,</p> <p>4 quote "Shang, and his colleagues played the</p> <p>5 'substitution game' and selected eight</p> <p>6 higher-quality trials of homeopathy and six</p> <p>7 trials of allopathy with the largest samples.</p> <p>8 "Were all of the types of homeopathy</p> <p>9 represented in this sample? I assume that only</p> <p>10 non-individualized homoeopathic trials were</p> <p>11 included, but I cannot be sure since Shang and</p> <p>12 colleagues have not informed us."</p> <p>13 Do you agree with Mr. Dantas'</p> <p>14 criticism that you and your colleagues "played</p> <p>15 the substitution game"?</p> <p>16 MR. SAHAM: Objection to form.</p> <p>17 THE WITNESS: I don't understand</p> <p>18 what he means by substitution games so I can't</p> <p>19 agree with that because I don't understand it. I</p> <p>20 don't disagree either.</p> <p>21 BY MR. WEISS:</p> <p>22 Q. Okay. In the third column, in the</p> | <p style="text-align: right;">271</p> <p>1 Q. Okay.</p> <p>2 A. Because I need to --</p> <p>3 MR. WEISS: Let's mark this as</p> <p>4 Defendants' Exhibit 8.</p> <p>5 (Defendants' Exhibit Number 8</p> <p>6 marked for identification.)</p> <p>7 BY MR. WEISS:</p> <p>8 Q. Now, I'm going to ask you to turn to</p> <p>9 the second page of your reply.</p> <p>10 A. Yes.</p> <p>11 Q. And I'll ask you to look in the</p> <p>12 second column or the middle column and just above</p> <p>13 the last paragraph, or the second to the last</p> <p>14 paragraph it says, quote, "Contrary to the claims</p> <p>15 of Peter Fisher and colleagues, we clearly stated</p> <p>16 the matching criteria and made all of the</p> <p>17 references available in webappendices and</p> <p>18 provided information on outcomes in a webtable.</p> <p>19 "A list of excluded studies, and</p> <p>20 further details on the included studies, are also</p> <p>21 now available from" and it gives a website.</p> <p>22 Now, when you say that you clearly</p>                                                                                                                              |
| <p style="text-align: right;">270</p> <p>1 middle of the paragraph, Mr. Dantas goes on to</p> <p>2 say, quote, "It is time for doctors to be humble,</p> <p>3 honest, and balanced in their appraisal of</p> <p>4 homeopathy and to join peacefully with</p> <p>5 homoeopathic researchers in doing more rigorous</p> <p>6 clinical trials."</p> <p>7 Do you interpret that to be an</p> <p>8 accusation that your article was not honest?</p> <p>9 MR. SAHAM: Objection to form.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. WEISS:</p> <p>12 Q. No?</p> <p>13 A. No, I don't.</p> <p>14 Q. And he says "It's time for doctors</p> <p>15 to be humble, honest and balanced in their</p> <p>16 appraisals of homeopathy," you don't think that</p> <p>17 he is referring to you and your colleagues who</p> <p>18 wrote the --</p> <p>19 A. No, I don't.</p> <p>20 Q. Okay. Now, you wrote a reply,</p> <p>21 correct, to that?</p> <p>22 A. This would be well appreciated, yes.</p>                                                                                                                           | <p style="text-align: right;">272</p> <p>1 stated the matching criteria and made all of the</p> <p>2 references available in webappendices, was that</p> <p>3 before or after you published the article?</p> <p>4 A. Well, if you look at the article,</p> <p>5 the article, you know, I just -- I wasn't aware</p> <p>6 of that anymore. I knew that we published</p> <p>7 additional stuff, additional information on our</p> <p>8 webpage.</p> <p>9 Now, if you look at the article, you</p> <p>10 will find this sign here. This indicates</p> <p>11 probably at that time that there is additional</p> <p>12 information available. I'm not entirely sure</p> <p>13 about this, they changed the symbols, but,</p> <p>14 probably this indicates.</p> <p>15 So we will be -- it will not be a</p> <p>16 problem to look that up entirely and just see</p> <p>17 what we do -- did. And I can also quickly just</p> <p>18 have a look here just to find out what was going</p> <p>19 on. Let me quickly see.</p> <p>20 So, first of all, in the paper we</p> <p>21 write, in the results section, which confirms</p> <p>22 that there was this web appendix, I couldn't</p> |

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| <p style="text-align: right;">273</p> <p>1 remember that before, so I was even too humble in<br/>2 addressing the issues comment.<br/>3 We included 105 publications that<br/>4 reported on the total of 110 independent<br/>5 trials -- 110 independent trials of homeopathy,<br/>6 Web Appendix 1, and 110 publications of 110<br/>7 matched trials of conventional medicine, Web<br/>8 Appendix 2.<br/>9 The references were included there.<br/>10 This is fair enough.<br/>11 Q. Oh, okay.<br/>12 A. Then we go on and we still have the<br/>13 problem with the trials of higher methodological<br/>14 quality. We amend that in our letter, that's<br/>15 part of the scientific debate, called post<br/>16 publication peer review.<br/>17 And just indicate that all of the<br/>18 references that refer to the trials that were of<br/>19 high methodological quality and we just have<br/>20 included that in there.<br/>21 Q. Okay.<br/>22 A. In addition, we also now just</p> | <p style="text-align: right;">275</p> <p>1 A. Again, not all of the information<br/>2 was available. The information on which<br/>3 reference we were referring to, the trials of<br/>4 higher quality was lacking. We amended that,<br/>5 fair enough.<br/>6 Q. Okay.<br/>7 A. But, the -- most of the rest was<br/>8 included and we then just provided additional<br/>9 information on outcomes in a webtable.<br/>10 Q. Okay. So even --<br/>11 A. So we didn't follow all of it, but<br/>12 we tried.<br/>13 Q. Uh-huh.<br/>14 A. And you need to keep in mind there<br/>15 we're talking about rather lengthy documents, you<br/>16 know, like twice 110 references for a scientific<br/>17 paper. This is never accepted normally.<br/>18 Q. Uh-huh.<br/>19 A. So you need to be careful what you<br/>20 bring, but we could have done better and we tried<br/>21 to amend it.<br/>22 Q. Uh-huh. Uh-huh. So you're saying</p>                                                                                                                           |
| <p style="text-align: right;">274</p> <p>1 provided, then, to compensate for that additional<br/>2 material.<br/>3 So thinking about what Fisher said,<br/>4 and also some of the comments here, they didn't<br/>5 do their homework properly.<br/>6 We followed more, you know, the<br/>7 QUORUM statement than I initially thought,<br/>8 because I would have forgotten about these web<br/>9 appendices.<br/>10 MR. SAHAM: Professor Juni, if you<br/>11 could just speak a little more slow slowly, I<br/>12 think it would be helpful for the court reporter.<br/>13 THE WITNESS: Yes.<br/>14 BY MR. WEISS:<br/>15 Q. Okay. So all of the information was<br/>16 available so then --<br/>17 A. Not all.<br/>18 Q. -- I'm just confused. And how is it<br/>19 that all of these people, including Peter Fisher,<br/>20 the 29 signatories to his letter and the other<br/>21 people who provided commentary felt that they<br/>22 were misled?</p>                                    | <p style="text-align: right;">276</p> <p>1 at that least some of the information was there,<br/>2 but all of the scientists and clinicians who<br/>3 wrote commentaries, they just didn't see it?<br/>4 MR. SAHAM: Objection to form.<br/>5 Misstates the testimony.<br/>6 THE WITNESS: No.<br/>7 BY MR. WEISS:<br/>8 Q. Well, I thought you said that<br/>9 actually there was a web appendices which had the<br/>10 information which people accused you of not<br/>11 disclosing.<br/>12 A. There was information on the<br/>13 references of the 110 trials included. There was<br/>14 not information on the, how many was it, 57<br/>15 trials excluded and this was also part of the<br/>16 information we gave off the bat on the<br/>17 institute's website even though it is not<br/>18 methodological standards for conventional<br/>19 systematic views published in paper journals.<br/>20 Q. Okay. Did you take any sort of poll<br/>21 or do any investigating as to the extent to which<br/>22 clinicians were misled by your publication?</p> |

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| <p style="text-align: right;">277</p> <p>1 A. No. There wasn't a clinical<br/>2 conclusion behind that. This paper, if you look<br/>3 at it, hasn't got any clinical implications<br/>4 because of us looking at the broad range of<br/>5 clinical -- clinical indications.<br/>6 So this is not a paper about<br/>7 clinical implications. This is a paper that has<br/>8 implications for science theory, that's the<br/>9 paper.<br/>10 Q. Uh-huh. So you mean it wouldn't<br/>11 suggest to a clinician that homeopathy has no<br/>12 benefit at all?<br/>13 A. Well, of course, it suggests that<br/>14 and these conclusions were not altered by any of<br/>15 the information we provided subsequently, because<br/>16 the nature of the analysis was not changed.<br/>17 And we followed the prespecified<br/>18 processes in the protocol when we performed the<br/>19 analysis. So this is a fundamentally different<br/>20 situation than what we had in the CLASS trial.<br/>21 Q. Uh-huh. So, even if you failed to<br/>22 disclose something that should have been</p> | <p style="text-align: right;">279</p> <p>1 analysis, could they?<br/>2 MR. SAHAM: Objection to form.<br/>3 THE WITNESS: And formerly, since<br/>4 they had the references of all of the trials,<br/>5 they could reproduce our quality assessment<br/>6 according to the same criteria.<br/>7 It would cost them some time as<br/>8 clinical research does and it's based on these<br/>9 references to be able to produce or reproduce our<br/>10 results doing exactly the same quality assessment<br/>11 and using the same selection criteria as we did.<br/>12 Actually, based on the references,<br/>13 they could obtain all of the trials that we<br/>14 included and do all of these steps.<br/>15 BY MR. WEISS<br/>16 Q. Okay. Let me ask you something, in<br/>17 the second paragraph, second column, second<br/>18 paragraph it says, quote "We agree that the<br/>19 larger trials of higher methodological quality,"<br/>20 and then there are references, "should have been<br/>21 identified and are grateful for the opportunity<br/>22 to rectify this oversight." Do you see that?</p> |
| <p style="text-align: right;">278</p> <p>1 disclosed initially, as long as it doesn't change<br/>2 the result, then it's not misleading?<br/>3 MR. SAHAM: Objection to form.<br/>4 THE WITNESS: We haven't failed to<br/>5 disclose any of the results of the trials.<br/>6 BY MR. WEISS:<br/>7 Q. Can you --<br/>8 A. Sorry, I can't do that.<br/>9 Q. Just focus on my question.<br/>10 A. Good. So basically all of the data<br/>11 points that were included in the analysis were<br/>12 disclosed, but they were not related to<br/>13 specifically with the reference.<br/>14 So there was no information that was<br/>15 excluded from the analysis, which is different<br/>16 from the situation we had here where some<br/>17 statistical data in the CLASS trial were excluded<br/>18 from the analysis.<br/>19 Q. So you say. So the people who were<br/>20 reading your article, because they didn't have<br/>21 the information about the trials, couldn't make<br/>22 their own conclusion about the validity of your</p>                                              | <p style="text-align: right;">280</p> <p>1 A. Exactly.<br/>2 Q. Okay. So you acknowledged that you<br/>3 should have included that information in your<br/>4 paper?<br/>5 A. I did that repetitively during the<br/>6 last 15 minutes and do it so again.<br/>7 Q. Okay. And so when you failed to<br/>8 disclose information in a paper, that's an<br/>9 oversight on your part, correct?<br/>10 MR. SAHAM: Objection to form.<br/>11 Misstates prior testimony. Asked and answered.<br/>12 BY MR. WEISS:<br/>13 Q. And when other people do it, it's<br/>14 misleading; is that right?<br/>15 MR. SAHAM: Objection to form.<br/>16 Misstates prior testimony. Lack of foundation.<br/>17 THE WITNESS: This is -- it has not<br/>18 the same magnitude in terms of what's here not<br/>19 providing additional information just on<br/>20 references.<br/>21 Whereas in the other situations,<br/>22 there were data points omitted. We did not omit</p>                                                                                                                                                 |

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| <p style="text-align: right;">281</p> <p>1 any data points in this analysis and this is a<br/>2 fundamental difference.<br/>3 BY MR. WEISS:<br/>4 Q. Uh-huh. So when people accuse you<br/>5 of being misleading, it's just because of an<br/>6 oversight on your part?<br/>7 A. I'm not sure, do I have to answer to<br/>8 such a statement? That's an unqualified<br/>9 statement.<br/>10 MR. SAHAM: I'm sorry. Could you<br/>11 read the question back. I had a soda distraction<br/>12 and I didn't get the question.<br/>13 (Record read.)<br/>14 MR. SAHAM: Objection to form.<br/>15 Foundation. Incomplete hypothetical. I mean, if<br/>16 you understand the question, you can answer.<br/>17 But, if you don't understand his question, you<br/>18 don't have to answer.<br/>19 MR. WEISS: Are you instructing this<br/>20 witness?<br/>21 MR. SAHAM: I'm making an objection.<br/>22 MR. WEISS: Well, that's not making</p>     | <p style="text-align: right;">283</p> <p>1 Since we haven't omitted any data<br/>2 points, this has a fundamentally different<br/>3 quality from what you are discussing before for<br/>4 the CLASS trial.<br/>5 BY MR. WEISS:<br/>6 Q. Okay. So it was just an oversight<br/>7 on your part, is that it?<br/>8 MR. SAHAM: Objection to form.<br/>9 THE WITNESS: If you mean with me --<br/>10 BY MR. WEISS:<br/>11 Q. Yes.<br/>12 A. -- me and my colleagues who authored<br/>13 that.<br/>14 Q. Yes.<br/>15 A. Then, indeed, yes, this was an<br/>16 oversight related to the reporting not to the<br/>17 analysis.<br/>18 Q. Oh, okay, good.<br/>19 A. Yes.<br/>20 Q. All right. That's not the only time<br/>21 that you've been accused of not including<br/>22 information and data in a study and for being</p>                                                                                                                          |
| <p style="text-align: right;">282</p> <p>1 an objection.<br/>2 THE WITNESS: Okay. Shall I reply<br/>3 or shall I not?<br/>4 BY MR. WEISS:<br/>5 Q. I asked you a question. If you can<br/>6 answer it, answer it.<br/>7 A. Okay. So you need to read it again.<br/>8 MR. SAHAM: And certainly, if you<br/>9 don't understand his question, tell him that.<br/>10 THE WITNESS: Okay. Read it again<br/>11 and then I can see what I can do.<br/>12 (Record read.)<br/>13 MR. SAHAM: Objection to form.<br/>14 Foundation. Incomplete. Misleading.<br/>15 Hypothetical.<br/>16 THE WITNESS: Okay, I will answer<br/>17 despite that. If this question is referring to<br/>18 our reply to the paper we had on homeopathy,<br/>19 Defendants' <u>Exhibit Number 4</u>, then we are<br/>20 referring to this as an oversight because we<br/>21 really and truly just did not, and should have<br/>22 done, just included these references.</p> | <p style="text-align: right;">284</p> <p>1 misleading, is it?<br/>2 MR. SAHAM: Objection to form.<br/>3 Misstates prior testimony. Lack of foundation.<br/>4 Relevance.<br/>5 MR. WEISS: That's interesting since<br/>6 I didn't characterize his testimony, but --<br/>7 THE WITNESS: I'm not sure what<br/>8 you're referring to, but I'm interested to find<br/>9 out if you could just show me the exhibit and<br/>10 then I can answer your question.<br/>11 BY MR. WEISS:<br/>12 Q. Well, do you have any recollection<br/>13 in the past of having been accused of being<br/>14 misleading, other than with respect to the<br/>15 homeopathy article?<br/>16 MR. SAHAM: Objection to form.<br/>17 THE WITNESS: I can give you<br/>18 examples where I expect this could have been the<br/>19 case. One is when we were publishing the<br/>20 meta-analysis that I was referring to earlier on<br/>21 rofecoxib.<br/>22 BY MR. WEISS:</p> |



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| <p style="text-align: right;">285</p> <p>1 Q. Okay.</p> <p>2 A. This could have happened.</p> <p>3 Q. Uh-huh.</p> <p>4 A. Then it could have happened with the</p> <p>5 randomized control trial, comparing different</p> <p>6 risks of supplementation agents. Again, this was</p> <p>7 again the results were null and this was debated</p> <p>8 a lot.</p> <p>9 So these are certainly different --</p> <p>10 different points in time when this happened.</p> <p>11 Interestingly enough, these statements were made</p> <p>12 mostly by people who had vested conflicts of</p> <p>13 interest.</p> <p>14 MR. WEISS: Let's take a five-minute</p> <p>15 break.</p> <p>16 THE VIDEOGRAPHER: Off the record at</p> <p>17 3:53 p.m.</p> <p>18 (Recess -- 3:53-4:00 p.m.)</p> <p>19 THE VIDEOGRAPHER: Back on the</p> <p>20 record at 4:00 p.m.</p> <p>21 (Defendants' <u>Exhibit Number 9</u></p> <p>22 marked for identification.)</p>                                                                                                                 | <p style="text-align: right;">287</p> <p>1 the knee joints.</p> <p>2 And that this cross-link separations</p> <p>3 are called a hylan as compared with more</p> <p>4 traditional chemically non-modified or</p> <p>5 (inaudible) modified hyaluronic acid.</p> <p>6 We performed a systematic review of</p> <p>7 direct randomized, comparisons, but also looked</p> <p>8 at indirect comparisons using specific</p> <p>9 methodological approaches.</p> <p>10 And we found that there was little</p> <p>11 evidence to suggest that the hylan would be</p> <p>12 superior in effectiveness as compared with the</p> <p>13 hyaluronic acid, but conversely that the hylan</p> <p>14 was associated with an increase in the risk of</p> <p>15 blood clot adverse events, such as flare-up, you</p> <p>16 know, redness and inflammation and liquid in the</p> <p>17 knee.</p> <p>18 And because of this, we discouraged</p> <p>19 the use of intra-articular hylan in patients with</p> <p>20 knee arthritis in research or practice.</p> <p>21 Q. Okay. In connection with performing</p> <p>22 what you described as a systematic review, did</p> |
| <p style="text-align: right;">286</p> <p>1 MR. WEISS: Back on the record?</p> <p>2 THE VIDEOGRAPHER: Uh-huh.</p> <p>3 BY MR. WEISS:</p> <p>4 Q. Dr. Juni, I've just handed you</p> <p>5 what's been marked as Defendants' <u>Exhibit 9</u>.</p> <p>6 It's an article that was apparently published in</p> <p>7 Arthritis and Rheumatism in December of 2007.</p> <p>8 It's an article entitled "Hylan</p> <p>9 Versus Hyaluronic Acid for Osteoarthritis of the</p> <p>10 Knee: A Systematic Review and Meta-Analysis,"</p> <p>11 now excepting my pronunciation of some of the</p> <p>12 terms --</p> <p>13 A. It wasn't that bad actually.</p> <p>14 Q. -- is this an article which you</p> <p>15 co-authored?</p> <p>16 A. Indeed.</p> <p>17 Q. Okay. And what is the thesis or</p> <p>18 conclusions of this article?</p> <p>19 A. This article looks at a comparison</p> <p>20 of a cross-link, hyaluronic acid, chemically</p> <p>21 modified hyaluronic acid, which is a constituent</p> <p>22 of the knee joint, normally it's the liquid of</p> | <p style="text-align: right;">288</p> <p>1 you and your colleagues, co-authors, exercise</p> <p>2 your judgment about which trials to review for</p> <p>3 purposes of your analysis?</p> <p>4 A. We exercised our judgment about</p> <p>5 which trials would satisfy the prespecified</p> <p>6 selection criteria for the analysis.</p> <p>7 Q. Okay. But the prespecified</p> <p>8 selection criteria for the analysis were criteria</p> <p>9 which were determined by you and your colleagues?</p> <p>10 A. Exactly, yes, according to a</p> <p>11 protocol.</p> <p>12 Q. Okay.</p> <p>13 A. We have a standard, you know,</p> <p>14 protocol for all of our systematic reviews in</p> <p>15 these fields.</p> <p>16 Q. Okay.</p> <p>17 MR. WEISS: I'm going to ask the</p> <p>18 court reporter to mark this as Defendants'</p> <p>19 <u>Exhibit 10</u>.</p> <p>20 (Defendants' <u>Exhibit Number 10</u></p> <p>21 marked for identification.)</p> <p>22 BY MR. WEISS:</p>                                                                                                                                                                      |

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| <p style="text-align: right;">289</p> <p>1 Q. Dr. Juni, Defendants' Exhibit 10 is</p> <p>2 a reproduction of letters that were published in</p> <p>3 the Annals of Internal Medicine in 2007.</p> <p>4 I'm going to ask you to turn to the</p> <p>5 second page of this document and sort of in the</p> <p>6 middle of the page, in the left-hand column</p> <p>7 there's a heading that reads "Chondroitin for</p> <p>8 Osteoarthritis of the Knee or Hip." Do you see</p> <p>9 that?</p> <p>10 A. No. I don't -- yes, I do, yes.</p> <p>11 Q. Okay.</p> <p>12 A. May I just quickly stipulate that</p> <p>13 this hasn't got anything to do with this, this is</p> <p>14 correct, I assume.</p> <p>15 Q. I'm sorry, what did you say?</p> <p>16 A. That's two, you know, different</p> <p>17 pieces of work.</p> <p>18 Q. Okay.</p> <p>19 A. And we can cover both.</p> <p>20 Q. Okay. So when you -- the article</p> <p>21 here which is -- the first author is Reichenbach?</p> <p>22 A. Reichenbach is the first author.</p> | <p style="text-align: right;">291</p> <p>1 chondroitin, a substance which typically is</p> <p>2 ingested but also can be injected with placebo on</p> <p>3 non-intervention controls.</p> <p>4 Q. And, again a meta-analysis requires</p> <p>5 the input of the people doing the study to decide</p> <p>6 which trials to include?</p> <p>7 A. What do you mean doing the study,</p> <p>8 doing the meta-analysis these people.</p> <p>9 Q. Yes.</p> <p>10 A. Yes, of course. They use their</p> <p>11 judgment based on predeveloped extraction sheets,</p> <p>12 data extraction sheets.</p> <p>13 They will then decide upon whether a</p> <p>14 trial satisfies the prespecified selection</p> <p>15 criteria or not.</p> <p>16 Q. Okay. Were you one of the</p> <p>17 co-authors on the study which is described or</p> <p>18 discussed here on Defendants' Exhibit 10?</p> <p>19 A. Yes, I was.</p> <p>20 Q. Okay. I'm going to point you to the</p> <p>21 first paragraph which reads: "TO THE EDITOR:</p> <p>22 Reichenbach and colleagues' meta-analysis on</p>            |
| <p style="text-align: right;">290</p> <p>1 Q. Okay.</p> <p>2 A. And this was published in the Annals</p> <p>3 of Internal Medicine, the one that is</p> <p>4 referring -- that is related to this</p> <p>5 correspondence section --</p> <p>6 Q. Uh-huh.</p> <p>7 A. -- whereas this was published in the</p> <p>8 Arthritis and Rheumatism Arthritis Care and</p> <p>9 Research.</p> <p>10 Q. Okay.</p> <p>11 A. So we need to look at the</p> <p>12 chondroitin meta-analysis first if we want to</p> <p>13 discuss that.</p> <p>14 Q. This is a different study than is</p> <p>15 referred to here?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Well, let's stick with what</p> <p>18 we've just marked as Defendants' Exhibit 10 and</p> <p>19 then. Why don't you tell me which study this</p> <p>20 Defendants' Exhibit 10 refers to.</p> <p>21 A. This study refers to a meta-analysis</p> <p>22 of randomized controlled trials comparing</p>                                                                                | <p style="text-align: right;">292</p> <p>1 chondroitin for osteoarthritis of the knee or hip</p> <p>2 (1) is both timely and important.</p> <p>3 "However, we are concerned that the</p> <p>4 author's sweeping conclusions are not well</p> <p>5 grounded in their methodology." Do you see that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. Do you agree with that</p> <p>8 criticism?</p> <p>9 A. No.</p> <p>10 Q. Okay. The third paragraph reads,</p> <p>11 quote, "The prespecified 'large trial' cutoff of</p> <p>12 200 participants included five trials with a</p> <p>13 summary small to moderate effect size of</p> <p>14 borderline significance, but the authors base</p> <p>15 their conclusions of 'no effect' on only 3 of</p> <p>16 these trials (citing, in addition, reporting of</p> <p>17 an intention-to-treat analysis), circumventing</p> <p>18 the most important benefit of systematic reviews</p> <p>19 that discourages a focus on a selective subset of</p> <p>20 studies." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you agree with that</p> |

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| <p style="text-align: right;">293</p> <p>1 criticism?</p> <p>2 A. No.</p> <p>3 Q. Okay. It goes on to say, quote, "It</p> <p>4 is of great concern that the author's choice to</p> <p>5 base their conclusions on only these 3 studies</p> <p>6 was almost certainly made without being blinded</p> <p>7 to these studies results (because the authors</p> <p>8 read all of the papers at the outset.)" Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. And do you agree with that</p> <p>12 criticism?</p> <p>13 A. That we weren't blinded, no, we</p> <p>14 weren't blinded indeed.</p> <p>15 Q. Uh-huh. And so again are you being</p> <p>16 accused here of gerrymandering data for inclusion</p> <p>17 in studies?</p> <p>18 A. I don't know the definition of</p> <p>19 gerrymandering.</p> <p>20 MR. SAHAM: Objection to form.</p> <p>21 Foundation.</p> <p>22 BY MR. WEISS:</p>                                             | <p style="text-align: right;">295</p> <p>1 circumvented the most important benefit of</p> <p>2 systematic reviews that discourages a focus on a</p> <p>3 selective subset of studies.</p> <p>4 Do you agree that systematic reviews</p> <p>5 discourage a focus on a selective subset of</p> <p>6 studies?</p> <p>7 MR. SAHAM: Objection to form.</p> <p>8 THE WITNESS: No, I don't agree with</p> <p>9 that. Systematic reviews encourage inclusion of</p> <p>10 all studies in the first place, and if you follow</p> <p>11 international guidelines, like the Cochrane</p> <p>12 Handbook that actually is the major</p> <p>13 methodological guidelines, these guidelines say</p> <p>14 that the main conclusion should be based on</p> <p>15 trials of higher methodological quality.</p> <p>16 And, this paper is one of the papers</p> <p>17 that actually is the basis for these statements.</p> <p>18 We had major problems in these -- in</p> <p>19 this paper with the interpretation of the overall</p> <p>20 data, because there was so much variation between</p> <p>21 the trials.</p> <p>22 They were all scattered all over the</p> |
| <p style="text-align: right;">294</p> <p>1 Q. Fair enough. Are you -- do you</p> <p>2 understand that this writer, Harley Goldberg and</p> <p>3 others, are accusing you of selecting data to</p> <p>4 drive your result?</p> <p>5 MR. SAHAM: Objection to form.</p> <p>6 Foundation.</p> <p>7 THE WITNESS: No. They are not</p> <p>8 accusing us of selecting data to drive the</p> <p>9 results. They're accusing us of basing our main</p> <p>10 conclusions onto a soft sample of randomized</p> <p>11 control trials that we believed is the least</p> <p>12 biased.</p> <p>13 BY MR. WEISS:</p> <p>14 Q. Uh-huh.</p> <p>15 A. That's what they're accusing us and</p> <p>16 this needs some additional explanation. Can I</p> <p>17 give that, this explanation, in refers to the</p> <p>18 I squared of 92.</p> <p>19 Q. Let me just ask you another</p> <p>20 question.</p> <p>21 A. Yes.</p> <p>22 Q. They've suggested that you</p> | <p style="text-align: right;">296</p> <p>1 place that it was impossible to derive one single</p> <p>2 pooled estimate. That is why we did something</p> <p>3 subsequent.</p> <p>4 So your attempts of making analogies</p> <p>5 between systematic reviews and randomized</p> <p>6 controlled trials is entirely inappropriate</p> <p>7 because these are really two different fields</p> <p>8 with different ways of, you know, looking at the</p> <p>9 data.</p> <p>10 Here we tried to understand</p> <p>11 variation, and based on that, we also will need</p> <p>12 to restrict an analysis just to larger trials of</p> <p>13 higher quality, as was the case here.</p> <p>14 BY MR. WEISS:</p> <p>15 Q. Uh-huh.</p> <p>16 A. We have demonstrated that about two</p> <p>17 months ago in an article published in the British</p> <p>18 Medical Journal (inaudible) so all the aspects</p> <p>19 that we have anticipated here already are then</p> <p>20 there repeated in the ultimate sample of</p> <p>21 meta-analysis. You can look at this.</p> <p>22 BY MR. WEISS:</p>                                                                  |

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| <p style="text-align: right;">297</p> <p>1 Q. So, once again, when people accuse<br/>2 you of not following appropriate methodology,<br/>3 they're just wrong.<br/>4 MR. SAHAM: Objection to form.<br/>5 Foundation. Misstates prior testimony.<br/>6 BY MR. WEISS:<br/>7 Q. Is that what you're telling me?<br/>8 A. If it comes to meta-analysis, we're<br/>9 one of the international leading groups. If<br/>10 somebody, you know, criticizes this metaanalysis<br/>11 here, that's fine. That's part of the debate and<br/>12 that's why we ongoingly, you know, reiterate, we<br/>13 do additional studies, et cetera.<br/>14 The decisions we made were<br/>15 scientifically grounded you say, scientifically<br/>16 founded, whatever.<br/>17 Q. Uh-huh.<br/>18 A. Clearly any decision that you do in<br/>19 these situations, systematic views are<br/>20 observational in nature that they may be post hoc<br/>21 decisions. They are also subjective elements.<br/>22 They can always be criticized, but</p> | <p style="text-align: right;">299</p> <p>1 evidence.<br/>2 This can be a continuous discussion.<br/>3 I think that many internationally reputed<br/>4 groups actually will agree on our evaluative<br/>5 approach in that.<br/>6 And this meta-analysis actually also<br/>7 made it as an example into the update of the<br/>8 QUORUM statement that you were referring to in<br/>9 the explanation of the collaboration document.<br/>10 This is used as an example of how to, you know,<br/>11 approach these aspects.<br/>12 Q. When you say these people aren't<br/>13 high flyers in systematic review, what did you<br/>14 mean by that?<br/>15 A. You know, they are -- there are --<br/>16 and as you could correctly point out with me in<br/>17 the 2002, people who have a long track record of<br/>18 methodological research and of systematic<br/>19 reviews.<br/>20 And there are other people that have<br/>21 shorter track records. And I wouldn't be aware<br/>22 of Goldberg, Obens and Bent having particularly</p>         |
| <p style="text-align: right;">298</p> <p>1 the situation here about explaining heterogeneity<br/>2 between studies, explaining variation between<br/>3 studies and making a decision based on the<br/>4 pattern you observe is a decision which is<br/>5 internationally established.<br/>6 Q. Uh-huh. But these writers here<br/>7 didn't agree that what you did was either<br/>8 internationally established or scientifically<br/>9 grounded, did they?<br/>10 A. No, they didn't, no.<br/>11 Q. But, they're --<br/>12 A. I wouldn't say they are high flyers<br/>13 in systematic reviews, sir.<br/>14 Q. Okay. And that would influence<br/>15 legitimacy of the criticism.<br/>16 A. I think the content influences the<br/>17 legitimacy of the criticism.<br/>18 Q. Uh-huh.<br/>19 A. So what they indicate just shows<br/>20 that they rather prefer an overall pooled<br/>21 estimate which is biased as opposed to an<br/>22 estimate that is based on highest quality</p>                                   | <p style="text-align: right;">300</p> <p>1 long track records of systematic reviews, you<br/>2 know, that they performed methodological research<br/>3 to look into these aspects.<br/>4 Q. So you don't think that they had a<br/>5 lot of experience which would enable them to<br/>6 criticize your work?<br/>7 A. I don't think that -- of course,<br/>8 they can criticize our work and we can address<br/>9 this, this is called scientific debate.<br/>10 Q. Uh-huh.<br/>11 A. But, you know, if this post<br/>12 publication peer review has a point. So that if<br/>13 there are things unclear, et cetera, that can be<br/>14 a debate being promoted and based on this debate<br/>15 actually one can come to just the next<br/>16 conclusions.<br/>17 Q. Uh-huh.<br/>18 A. If you do research that is, you<br/>19 know, published in the major journals as the<br/>20 CLASS trial was or as this paper was behind that,<br/>21 you assume that you generate some debate and the<br/>22 point is then just to do this debate in a</p> |

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| <p style="text-align: right;">301</p> <p>1 hopefully transparent fashion.</p> <p>2 All of the data that were used for</p> <p>3 this study were published. Everything was</p> <p>4 published, there's a long appendix in the paper.</p> <p>5 The formulae were published.</p> <p>6 You can't do a better reporting, I</p> <p>7 think, or not much better than what we did at</p> <p>8 that time point.</p> <p>9 But the decisions, all of the</p> <p>10 decisions are debatable. They remain subjective,</p> <p>11 but if somebody dislikes the decision, he can go</p> <p>12 for the main results of all of the 20 trials.</p> <p>13 It's published. Everything is</p> <p>14 there. It can be reproduced and based on that</p> <p>15 can make his or her own opinion. That's what</p> <p>16 these authors do and that is fair enough.</p> <p>17 Q. Uh-huh. Uh-huh. But when you said</p> <p>18 these people are not high flyers in systematic</p> <p>19 review, did you mean to suggest that their</p> <p>20 criticism was less valid as a result of their</p> <p>21 lack of experience?</p> <p>22 A. I was -- I was relating to that --</p>                     | <p style="text-align: right;">303</p> <p>1 with us, okay.</p> <p>2 Q. Okay. Did you also do a controlled</p> <p>3 trial involving hyaluronic acid?</p> <p>4 A. Very much, indeed.</p> <p>5 Q. Okay.</p> <p>6 A. And I'm sure we were criticized</p> <p>7 there for omissions.</p> <p>8 Q. Why are you so sure that you were</p> <p>9 criticized for omissions?</p> <p>10 A. Because the statements made by the</p> <p>11 correspondents actually were quite particular to</p> <p>12 say it's, you know, very timidly and not founded.</p> <p>13 Q. So you don't think that the</p> <p>14 criticisms were valid?</p> <p>15 A. I don't think that the criticisms</p> <p>16 were valid, as much as I have them in my mind</p> <p>17 right now. But I'm keen to look at them again</p> <p>18 and to specify what I think was invalid.</p> <p>19 Q. Okay.</p> <p>20 MR. WEISS: Let's mark this as</p> <p>21 Defendants' <u>Exhibit 11</u>.</p> <p>22 (Defendants' <u>Exhibit Number 11</u>)</p> |
| <p style="text-align: right;">302</p> <p>1 let me see now, you have me, huh? Okay. I think</p> <p>2 there are two aspects. One is the content of the</p> <p>3 line of arguments that they have and one is their</p> <p>4 experience.</p> <p>5 Now, if the content that they -- the</p> <p>6 point that they are making is a valid point, then</p> <p>7 it's -- I would see no reason not to qualify it</p> <p>8 as a valid point. That's fine, that's fair</p> <p>9 enough.</p> <p>10 If the -- if the content, you know,</p> <p>11 is already problematic, as I think is the case</p> <p>12 here, and the track record of the people is</p> <p>13 limited, then perhaps I take things slightly less</p> <p>14 seriously.</p> <p>15 And again, you know, that's highly</p> <p>16 subjective, how serious I take that or not. And</p> <p>17 I think the case of the CLASS trial, now we're</p> <p>18 here in a lawsuit, of course.</p> <p>19 But, if this was referring to this,</p> <p>20 you know, we can have scientific debates and we</p> <p>21 can disagree and that's fair enough. I disagree</p> <p>22 with these authors. Geis disagreed with me and</p> | <p style="text-align: right;">304</p> <p>1 marked for identification.)</p> <p>2 THE WITNESS: It's nice to review</p> <p>3 all of my work.</p> <p>4 BY MR. WEISS:</p> <p>5 Q. I certainly enjoyed it. I'm handing</p> <p>6 you what's been marked as Defendants' <u>Exhibit 11</u>.</p> <p>7 And this is an article published in Arthritis &amp;</p> <p>8 Rheumatism, which is entitled Efficacy and Safety</p> <p>9 of Intraarticular Hylan or Hyaluronic Acids for</p> <p>10 Osteoarthritis of the Knee. A Randomized</p> <p>11 Controlled Trial.</p> <p>12 Dr. Juni, are you one of the authors</p> <p>13 of this trial?</p> <p>14 A. Yes, I am.</p> <p>15 Q. In fact, you are the first author of</p> <p>16 this trial.</p> <p>17 A. Correct.</p> <p>18 Q. And does that have any significance?</p> <p>19 A. It has. I was the prime</p> <p>20 investigator of this trial.</p> <p>21 Q. What does that mean?</p> <p>22 A. That I was chairing the steering</p>                          |

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| <p>305</p> <p>1 group. That I had main responsibility for<br/>2 planning and conduct of the trial and for the<br/>3 interpretation of the analysis.<br/>4 Q. Did you design or help design this<br/>5 trial?<br/>6 A. Yes. I had minor responsibility for<br/>7 designing the trial.<br/>8 Q. Okay:<br/>9 MR. WEISS: I'm going to ask the<br/>10 reporter to mark this as Defendants' <u>Exhibit 12</u>.<br/>11 (Defendants' <u>Exhibit Number 12</u><br/>12 marked for identification.)<br/>13 BY MR. WEISS:<br/>14 Q. And Defendants' <u>Exhibit 12</u> is some<br/>15 letters that I believe were also published in<br/>16 Arthritis &amp; Rheumatism.<br/>17 And I'm going to turn your -- ask<br/>18 you to turn your attention, Dr. Juni, to the<br/>19 second column on the first page under the heading<br/>20 "Comparison of hylan and hyaluronic acid for knee<br/>21 osteoarthritis," and the article by Juni, et al.<br/>22 Do you see that?</p> | <p>307</p> <p>1 "A recent trial (not supported by a<br/>2 pharmaceutical firm), demonstrated superiority of<br/>3 hylan compared with HA (notably in terms of<br/>4 duration of action) but without a huge difference<br/>5 in terms of the magnitude of response.<br/>6 "Therefore, the difference in effect<br/>7 size between hylan and HA used in the study by<br/>8 Juni, et al. is probably overestimated."<br/>9 Dr. Juni, do you understand that<br/>10 this letter by Xavier Chevalier and others is at<br/>11 least in part accusing you again of not including<br/>12 relevant information in your meta-analyses?<br/>13 A. You're confusing things. That's a<br/>14 randomized trial.<br/>15 Q. I'm sorry, in your --<br/>16 A. And I don't understand it like that.<br/>17 He is accusing us of having wrong assumptions for<br/>18 the power calculation.<br/>19 Q. Uh-huh. And that is because you<br/>20 failed to include certain information?<br/>21 A. No.<br/>22 Q. No?</p>                                                  |
| <p>306</p> <p>1 A. Yes.<br/>2 Q. And do you understand that this<br/>3 letter refers to Defendants' <u>Exhibit 11</u>?<br/>4 A. Correct. Correct.<br/>5 Q. And do you understand that this is a<br/>6 letter to the editor that was published and<br/>7 represents commentary on your article?<br/>8 A. I do.<br/>9 Q. Okay. I'll ask you to take a look<br/>10 at the second paragraph and it reads, quote, "We<br/>11 would take issue with several aspects of the<br/>12 methodology of this trial.<br/>13 "The sample size used in this<br/>14 superiority trial was calculated on a difference<br/>15 in effect size on ~0.4SD units between hylan and<br/>16 HA, defined from a meta-analysis performed in<br/>17 2003.<br/>18 "However, several meta-analyses,<br/>19 including new controlled trials and comparison<br/>20 studies between viscosupplements (with<br/>21 conflicting results) have been published since<br/>22 2003.</p>             | <p>308</p> <p>1 A. No, not at all. We were indicating<br/>2 in the sample size calculation what our<br/>3 assumptions were and we correctly specified<br/>4 everything as it was in the protocol.<br/>5 Q. But is Chevalier not suggesting that<br/>6 if you had included other trials in your<br/>7 calculation of the sample size, you would have<br/>8 reached a different result?<br/>9 A. That's just an inadequate question<br/>10 because you can't change your assumption of the<br/>11 sample size calculation when your results become<br/>12 available. Nobody can do that, neither Geis with<br/>13 CLASS nor we with SVISCOT.<br/>14 Q. Besides your characterization of my<br/>15 question as inadequate --<br/>16 A. Sorry about that.<br/>17 Q. -- and it may well be, is that a<br/>18 fair statement of the criticism that's being<br/>19 offered by Chevalier?<br/>20 A. He's saying that basically we were<br/>21 underpowered to detect realistic effect sizes.<br/>22 And we addressed that then in our response that,</p> |



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| <p style="text-align: right;">309</p> <p>1 in fact, this trial at the time point when --</p> <p>2 when the trial was published was among the</p> <p>3 largest trials anyway and that we had ample</p> <p>4 statistical power to detect any small scale, even</p> <p>5 so still clinically relevant aspects.</p> <p>6 We had ample power to do that. So</p> <p>7 the statement they made is not grounded on facts.</p> <p>8 Q. So, again, one of your critics is</p> <p>9 just wrong?</p> <p>10 A. Well, yes. You know, something</p> <p>11 which I think is important just to see. This is</p> <p>12 about publishing results and then opening the</p> <p>13 debate. And there are all of these people who</p> <p>14 disagree and you address, you know, the points</p> <p>15 they make.</p> <p>16 Sometimes they have points that are,</p> <p>17 you know, okay, should be made. And sometimes</p> <p>18 things look a bit -- look a bit different and you</p> <p>19 just tend to disagree with them. That's part of</p> <p>20 the scientific debate.</p> <p>21 Q. Uh-huh.</p> <p>22 A. But the sample size calculation was</p> | <p style="text-align: right;">311</p> <p>1 have been sufficient?</p> <p>2 A. That's an established cutoff at the</p> <p>3 80 percent. But, when I just look at our</p> <p>4 results -- let me just read to see what we have</p> <p>5 included in the first page. "Power for the</p> <p>6 analysis of these random sample" -- let me see,</p> <p>7 no, no, that's not that.</p> <p>8 Okay. "The effect size by Raman et</p> <p>9 al. was 1 standard deviation unit rather than one</p> <p>10 (inaudible). The power of SVISCOT-1 to detect</p> <p>11 this effect size was 100%." You know, there is</p> <p>12 actually after rounding it was 100 percent. It</p> <p>13 was clearly sufficient, yes.</p> <p>14 Q. So are you saying that even when you</p> <p>15 did what they said you should have done, the</p> <p>16 result wasn't different?</p> <p>17 A. Even if they said -- if we did what</p> <p>18 they said we should have done, we have, you know,</p> <p>19 we would have had a sample size which was so</p> <p>20 large that we still would have -- that we really</p> <p>21 would have achieved enough power.</p> <p>22 So the power to detect the effects</p> |
| <p style="text-align: right;">310</p> <p>1 Kosher.</p> <p>2 Q. In your opinion.</p> <p>3 A. I think in opinion of most</p> <p>4 methodologists it will show that if you have 20</p> <p>5 just independently review that, I'm convinced</p> <p>6 that the vast majority will agree on that. There</p> <p>7 is not much subjectivity in there.</p> <p>8 Q. So then Chevalier and Marin,</p> <p>9 basically they just don't know what they're</p> <p>10 talking about?</p> <p>11 A. Well, again, I cannot read minds.</p> <p>12 If I look at the second paragraph of this</p> <p>13 statement, they could have repeated the sample</p> <p>14 size calculation including these new results and</p> <p>15 used different margins for superiority and could</p> <p>16 have found that we still had above 80 percent</p> <p>17 power.</p> <p>18 Q. Uh-huh.</p> <p>19 A. And we also address that in our</p> <p>20 answers as far as I remember. We would need to</p> <p>21 look at it.</p> <p>22 Q. And would above 80 percent power</p>                                                                                                | <p style="text-align: right;">312</p> <p>1 of this study they're referring to is</p> <p>2 100 percent. The power to detect the effects you</p> <p>3 assumed in the power calculation was 96 percent.</p> <p>4 So our power even increased</p> <p>5 according to their criteria.</p> <p>6 Q. I see.</p> <p>7 A. So they didn't understand the</p> <p>8 magnitude of the effects.</p> <p>9 Q. I see. Okay. And then the next</p> <p>10 paragraph says, quote, "The decision to assess</p> <p>11 the primary outcome measures (standardized</p> <p>12 Western Ontario and McMaster Universities OA</p> <p>13 Index pain score) at a single end point (6</p> <p>14 months) is also questionable, because it is now</p> <p>15 recognized that differences should be tested</p> <p>16 throughout the observation period.</p> <p>17 "From a patient's point of view, it</p> <p>18 is better to be symptomatically improved for a</p> <p>19 period "of" six months rather than only "at" six</p> <p>20 months."</p> <p>21 Now, I want to ask you, do you agree</p> <p>22 that it is now recognized that differences should</p>                                                     |

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| <p style="text-align: right;">313</p> <p>1 be tested throughout an observation period with<br/>2 respect to the OA index pain score?<br/>3 A. Recognized by whom and when?<br/>4 Q. Well, as stated by Chevalier and<br/>5 Morin in their paper. Do you agree with that<br/>6 statement?<br/>7 MR. SAHAM: Objection to form.<br/>8 THE WITNESS: No.<br/>9 BY MR. WEISS:<br/>10 Q. No.<br/>11 A. And I wouldn't agree with this<br/>12 statement in that when we actually planned this<br/>13 study, it was rather well established to have one<br/>14 or two time points. We had two time points, one<br/>15 of three months and one at six months.<br/>16 The one measured at three months was<br/>17 measured in a random sample of patients, and a<br/>18 truly random sample of patients that is<br/>19 representative for the entire trial.<br/>20 So, given the limited resources we<br/>21 had for this trial, we did our best to have at<br/>22 least the time point at baseline, three months</p>           | <p style="text-align: right;">315</p> <p>1 debatable. So, we have, you know, we have trials<br/>2 sometimes where we have diaries measuring things<br/>3 daily or weekly.<br/>4 And other trials we decided on<br/>5 having this approach, we followed the protocol<br/>6 that we prespecified the protocol was approved<br/>7 and agreed upon. That's all.<br/>8 BY MR. WEISS:<br/>9 Q. So do you attach any significance to<br/>10 their statement that it is now recognized that<br/>11 differences should be tested throughout the<br/>12 observation period?<br/>13 MR. SAHAM: Objection to form.<br/>14 THE WITNESS: No, I don't. I don't<br/>15 assign much significance to that because they --<br/>16 I would expect them to provide me with, you know,<br/>17 a consensus of a large body like ARC or like<br/>18 OMERACT that really formally had established<br/>19 that.<br/>20 And, at the time point we planned<br/>21 this trial, which was in 2002, actually this<br/>22 certainly wasn't the case.</p>                                            |
| <p style="text-align: right;">314</p> <p>1 and six months.<br/>2 BY MR. WEISS:<br/>3 Q. Okay. So when they say something<br/>4 like "it's now recognized that differences should<br/>5 be tested throughout the observation period,"<br/>6 that's just like you saying that something is<br/>7 improper or proper or scientifically invalid is<br/>8 it not?<br/>9 MR. SAHAM: Objection to form.<br/>10 Calls for speculation. Foundation.<br/>11 THE WITNESS: Again, this is about<br/>12 the content and I think that it's always open for<br/>13 discussion which time points to use, if you<br/>14 measure a continuous outcome.<br/>15 And the most important aspect is<br/>16 that once you have stipulated in the protocol and<br/>17 have submitted to the authorities or the Research<br/>18 Ethics Commissions, et cetera, your protocol, you<br/>19 need to stick to what was specified in the<br/>20 protocol.<br/>21 So it's always a question when<br/>22 should you measure and it will always be</p> | <p style="text-align: right;">316</p> <p>1 BY MR. WEISS:<br/>2 Q. Okay. On the next page on the top<br/>3 of says, quote "The authors claim that an<br/>4 intermediate visit at three months did not show<br/>5 any difference between the three treatment<br/>6 groups. At this point, however, a random sample<br/>7 of only 50 percent of patients was evaluated.<br/>8 Why?" Do you see that?<br/>9 A. Yes.<br/>10 Q. And are they basically criticizing<br/>11 you for reporting on less than all of the<br/>12 available data?<br/>13 A. No. They are criticizing us for<br/>14 prespecifying a random sample of patients in<br/>15 which -- in whom we measured the outcome.<br/>16 And those that we measured the<br/>17 outcome, those patients were actually included in<br/>18 the analysis. All of them, as you can see in the<br/>19 carefully designed flow chart on Page 3612 of<br/>20 Exhibit 11, where everything is actually fully<br/>21 reported, including the number of patients<br/>22 randomly sampled and the random sampling used to</p> |

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| <p style="text-align: right;">317</p> <p>1 select these patients is actually included in the<br/>2 method section.</p> <p>3 Q. Uh-huh. So the bottom line though<br/>4 is that you ultimately did not report on<br/>5 50 percent of the patients who were included in<br/>6 the trial?</p> <p>7 MR. SAHAM: Objection to form.<br/>8 Foundation:</p> <p>9 THE WITNESS: The bottom line is<br/>10 that we ultimately reported on all of the<br/>11 patients that were randomly selected for a<br/>12 three-month follow-up in the study and this is<br/>13 methodologically fully (inaudible).</p> <p>14 BY MR. WEISS:</p> <p>15 Q. Okay. But that was less than<br/>16 100 percent of the patients who were in the<br/>17 trial, correct?</p> <p>18 A. This was less than 100 percent of<br/>19 the patients included in the trial according to a<br/>20 prespecified selection process, yes.</p> <p>21 Q. And then in the last paragraph it<br/>22 says, quote, "In their study, Juni et al.</p>                                                                                                        | <p style="text-align: right;">319</p> <p>1 Q. So once again your critics are --<br/>2 they're just wrong?</p> <p>3 A. Not all of my critics are wrong.<br/>4 You know, it's fine, I take what Wallach said and<br/>5 say, okay, we should have referenced these<br/>6 studies.</p> <p>7 But, we're doing, you know, I think<br/>8 like many groups, we're trying to do decent<br/>9 research and it's not always optimal, but I think<br/>10 it's rather robust what we're doing and that is<br/>11 why we are internationally recognized.</p> <p>12 Q. Okay. Now, you replied to that<br/>13 criticism as well, correct?</p> <p>14 A. I did, yes. Or we did, my<br/>15 colleagues and I.</p> <p>16 Q. Right. And in -- and you also<br/>17 replied to the criticisms that were offered<br/>18 regarding the homeopathy article, correct?</p> <p>19 A. I was part of the replying authors,<br/>20 yes.</p> <p>21 Q. Right.</p> <p>22 A. I think there were four of the</p> |
| <p style="text-align: right;">318</p> <p>1 attempted to answer a relevant question.<br/>2 However, there are too many ambiguities in the<br/>3 trial methodology. May we, therefore, suggest to<br/>4 the authors that they should be more cautious in<br/>5 drawing their conclusions regarding the relative<br/>6 safety and efficacy of different<br/>7 viscosupplements." Do you see that?</p> <p>8 A. I see it.</p> <p>9 Q. Do you take their suggestion to<br/>10 heart?</p> <p>11 A. It's a ridiculous statement. There<br/>12 is -- this -- I know this now sounds rather<br/>13 straight and rather strong, but there are very<br/>14 few trials in my opinion that follow the Consort<br/>15 statement as closely as this trial.</p> <p>16 If you compare this to what should<br/>17 be included, you know, in a trial report<br/>18 according to Consort, you will find that the vast<br/>19 mass majority of information is in here.</p> <p>20 So this statement actually clearly<br/>21 lacks, you know, any evidence. That's just a<br/>22 statement and the statement is inaccurate.</p> | <p style="text-align: right;">320</p> <p>1 group.</p> <p>2 Q. Uh-huh. Do you think that your<br/>3 decision to defend your results undermined the<br/>4 validity of your initial presentation in any way?</p> <p>5 A. No.</p> <p>6 Q. No. And the fact that you decided<br/>7 to defend what you had originally written and<br/>8 stand by it, should that indicate to anyone that<br/>9 there's no less reason to believe the results of<br/>10 your papers?</p> <p>11 A. No. Since we followed the protocol<br/>12 and, you know, were sticking to the protocol<br/>13 exactly, there's no reason why we shouldn't stick<br/>14 to our results and continue to underscore our<br/>15 conclusions.</p> <p>16 Q. Uh-huh. Okay. Now you mentioned<br/>17 before your meta-analysis on Vioxx. Do you<br/>18 recall that?</p> <p>19 A. Yes.</p> <p>20 Q. And you received some criticism with<br/>21 respect to that meta-analyses as well, correct?</p> <p>22 A. Yes.</p>    |

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| <p style="text-align: right;">321</p> <p>1 Q. I'm going to ask you to -- sorry.</p> <p>2 MR. WEISS: Let's just aggregate all</p> <p>3 of these. I'm going to give you a bunch and then</p> <p>4 we can just mark it as one exhibit. There's no</p> <p>5 need to -- I don't know why they are done this</p> <p>6 way.</p> <p>7 But you can mark this all once I</p> <p>8 hand them out in the right order as one exhibit.</p> <p>9 So that's Page 25. That's Page 24. You can just</p> <p>10 get rid of that page, because this is 24 and 25.</p> <p>11 So don't worry about that page.</p> <p>12 MR. MONTGOMERY: We have to go off</p> <p>13 the record in five minutes.</p> <p>14 MR. WEISS: Okay. Let's go off the</p> <p>15 record so I can get this organized.</p> <p>16 THE VIDEOGRAPHER: Off the record at</p> <p>17 4:35 p.m.</p> <p>18 (Recess -- 4:35-4:41 p.m.)</p> <p>19 THE VIDEOGRAPHER: This is the</p> <p>20 beginning of Tape Number 5. Back on the record</p> <p>21 at 4:41 p.m.</p> <p>22 (Defendants' <u>Exhibit Number 13</u></p>                                           | <p style="text-align: right;">323</p> <p>1 placebo-controlled studies in about 2000 patients</p> <p>2 with Alzheimer's disease. The results of these</p> <p>3 trials show no difference between rofecoxib</p> <p>4 (Vioxx) and placebo." Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Once again you're being accused of</p> <p>7 ignoring and failing to include relevant data in</p> <p>8 your analyses, correct?</p> <p>9 MR. SAHAM: Objection to form.</p> <p>10 THE WITNESS: We're accused but this</p> <p>11 accusation is inappropriate. Again, we followed</p> <p>12 the protocols to include trials in patients with</p> <p>13 musculoskeletal conditions. So the Alzheimer</p> <p>14 trials did not qualify. It is prespecified.</p> <p>15 BY MR. WEISS:</p> <p>16 Q. Okay. It goes on to say, quote "The</p> <p>17 conclusions of their article are inappropriately</p> <p>18 driven by their choice of method, involving</p> <p>19 pooling of results for placebo, non-naproxen</p> <p>20 non-steroidal anti-inflammatory drugs (NSAIDs),</p> <p>21 and naproxen.</p> <p>22 "This approach ignores</p>           |
| <p style="text-align: right;">322</p> <p>1 marked for identification.)</p> <p>2 BY MR. WEISS:</p> <p>3 Q. Dr. Juni, I'm now showing you what</p> <p>4 has been marked as Defendants' <u>Exhibit 13</u>. This</p> <p>5 is a reproduction of some correspondence that was</p> <p>6 published in The Lancet, Volume 365, January 1,</p> <p>7 2005.</p> <p>8 In the top left-hand corner the</p> <p>9 title reads "Discontinuation of Vioxx" and it</p> <p>10 goes on to say, quote "The analysis by Peter Juni</p> <p>11 and colleagues, (Dec 4, p 2021) contravenes the</p> <p>12 basic principle of meta-analyses to combine like</p> <p>13 with like, and thus arrives at flawed</p> <p>14 conclusions."</p> <p>15 Dr. Juni, does that refer to your</p> <p>16 meta-analysis of Vioxx?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And this letter from Peter</p> <p>19 Kim and Alise Reicin goes on to say, quote</p> <p>20 "Moreover, Juni and colleagues ignore data</p> <p>21 included in previous analyses available on the US</p> <p>22 Food and Drug Administration's website for large</p> | <p style="text-align: right;">324</p> <p>1 pharmacodynamic differences between naproxen and</p> <p>2 other NSAIDs and placebo.</p> <p>3 "Also ignored are data from the</p> <p>4 TARGET study (the other large outcomes study of a</p> <p>5 cyclo-oxygenase 2 [COX 2] inhibitor compared with</p> <p>6 naproxen." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And are these accusations or</p> <p>9 criticisms also inappropriate?</p> <p>10 A. "Also ignored are data from the</p> <p>11 TARGET study," this accusation is inappropriate</p> <p>12 because the TARGET study did not qualify, that</p> <p>13 was a different intervention.</p> <p>14 And the pooling of results from</p> <p>15 different trials with different controls, that's</p> <p>16 a correct statement. So we did an overall</p> <p>17 analysis and then we did analysis stratified</p> <p>18 according to type of control.</p> <p>19 So we carefully explored whether it</p> <p>20 was scientifically valid to do this overall</p> <p>21 analysis of comparing Vioxx in a therapeutic or</p> <p>22 supertherapeutic doses with any type of control</p> |

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| <p style="text-align: right;">325</p> <p>1 and we showed both types of analysis in the</p> <p>2 paper.</p> <p>3 Q. Uh-huh. But when they say that your</p> <p>4 conclusions are inappropriately driven by their</p> <p>5 choice of method, do they mean that you designed</p> <p>6 the study in a manner that would drive a</p> <p>7 particular result?</p> <p>8 A. Well, I don't know what they mean.</p> <p>9 Q. Is that how you interpret it?</p> <p>10 A. Let me see. Where is it?</p> <p>11 Q. On the --</p> <p>12 A. In the first paragraph.</p> <p>13 Q. No. The second full paragraph,</p> <p>14 which begins "Juni and colleagues."</p> <p>15 A. No. They just say that the methods</p> <p>16 we used actually drove the conclusions in a</p> <p>17 certain direction and this was associated with</p> <p>18 the method we choose.</p> <p>19 They did not tell us here that we,</p> <p>20 you know, did some post hoc changes of the</p> <p>21 approaches, et cetera, which we didn't actually.</p> <p>22 I can't see that and they're not</p> | <p style="text-align: right;">327</p> <p>1 homeopaths, you know.</p> <p>2 Q. Uh-huh.</p> <p>3 A. You know, this was done at a very</p> <p>4 professional level actually, and again, you could</p> <p>5 say we disagreed, we fundamentally disagreed with</p> <p>6 some aspects. That's clear, but it was dealt</p> <p>7 with by Merck, Sharp &amp; Dohme, in my view, in a</p> <p>8 rather professional way.</p> <p>9 Q. Uh-huh. Well, if you read the last</p> <p>10 paragraph it says, quote "Finally, we believe</p> <p>11 that to print a comment in a scientific journal</p> <p>12 criticizing Merck's ethical standards on the</p> <p>13 basis of unfounded allegations printed in the lay</p> <p>14 press, without even the pretense of investigation</p> <p>15 into their accuracy or completeness, is</p> <p>16 inappropriate.</p> <p>17 "Merck's activities with respect to</p> <p>18 Vioxx before its withdrawal were ethical and</p> <p>19 reflected Merck's belief in the safety of its</p> <p>20 product." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you think that in light of</p>     |
| <p style="text-align: right;">326</p> <p>1 suggesting that. They're far too professional to</p> <p>2 suggest that.</p> <p>3 Q. They're far too professional to</p> <p>4 suggest what?</p> <p>5 A. To suggest that you were changing</p> <p>6 methodology or so post hoc.</p> <p>7 Q. Who --</p> <p>8 A. Well, the -- you know people,</p> <p>9 researchers of Merck, Sharp &amp; Dohme.</p> <p>10 Q. I'm sorry, researcher what?</p> <p>11 A. Researchers of Merck, Sharp &amp; Dohme,</p> <p>12 you know, the people who were actually signing</p> <p>13 this letter were with Merck, the manufacturer of</p> <p>14 rofecoxib at that time.</p> <p>15 Q. Uh-huh.</p> <p>16 A. I basically indicated something, you</p> <p>17 know, the statement, it was about at the same</p> <p>18 time when we had the homeopathy papers, within a</p> <p>19 year.</p> <p>20 And the debate we had with Merck,</p> <p>21 Sharp &amp; Dohme was let considerably more</p> <p>22 professionally than the debate we had with</p>                                       | <p style="text-align: right;">328</p> <p>1 this concern that is being voiced by the authors</p> <p>2 here -- well, strike that question.</p> <p>3 Do you agree with the criticism that</p> <p>4 is being offered by Peter Kim and Alise Reicin in</p> <p>5 that paragraph?</p> <p>6 A. With this paragraph, I'm not sure</p> <p>7 whether I'm in a position to agree or disagree.</p> <p>8 They're criticizing The Lancet editor who was</p> <p>9 actually writing this comment about the</p> <p>10 withdrawal of Vioxx and its aftermath.</p> <p>11 And we were surprised that The</p> <p>12 Lancet editor actually wrote this. This was</p> <p>13 Richard Horton wrote this comment which was a</p> <p>14 rather strong statement.</p> <p>15 And this probably contributed to our</p> <p>16 piece of work becoming more controversial at that</p> <p>17 time.</p> <p>18 Q. Uh-huh. Uh-huh. Do you think that</p> <p>19 the comment by Mr. Horton was of the same</p> <p>20 character or same nature as your comment in BMJ</p> <p>21 about the CLASS study?</p> <p>22 A. I would need to look at the comment</p> |



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| <p style="text-align: right;">329</p> <p>1 again and no, I would say not, it wasn't of the<br/>2 same nature.<br/>3 And Richard Horton at the time, when<br/>4 I remember this correctly, was also referring to<br/>5 no lawsuits potentially. You know, potentially<br/>6 being, you know, Merck, Sharp &amp; Dohme being<br/>7 threatened with.<br/>8 And that actually our meta-analysis<br/>9 was just one piece in the jigsaw to, you know, to<br/>10 contribute to a rather problematic outcome for<br/>11 Merck, Sharp &amp; Dohme.<br/>12 And I think this is a comment that<br/>13 may come from an editor of a major journal and<br/>14 that a regular editorialist, as I am sometimes,<br/>15 would not be in a position anyway to have such a<br/>16 comment.<br/>17 These were strong statements, and in<br/>18 my view, these statements were stronger than our<br/>19 statement on the BMJ on the CLASS.<br/>20 So, again, that's open for debate<br/>21 and that one would need to have a qualitative<br/>22 comparison of the statements you need to discuss</p>            | <p style="text-align: right;">331</p> <p>1 correspondence section which controversially<br/>2 discusses my work as a compliment.<br/>3 BY MR. WEISS:<br/>4 Q. Uh-huh. But then do you use words<br/>5 like misleading when describing other people's<br/>6 work in order to generate controversy?<br/>7 MR. SAHAM: Objection to form.<br/>8 THE WITNESS: No. I use words like<br/>9 misleading, but I'll have a look at the article<br/>10 then in a moment to tell you whether I would<br/>11 still phrase it the same way.<br/>12 And I use words like misleading in<br/>13 situations where I believe that the decisions to<br/>14 deviate from the protocol cannot be justified.<br/>15 I'm very careful also when it comes<br/>16 to publication rights. I never sign a<br/>17 confidentiality agreement when I'm, you know, a<br/>18 member of a steering group of a pharmaceutical<br/>19 trial or of an intervention drug.<br/>20 I never sign, for instance, a<br/>21 confidentiality agreement which prevents me from<br/>22 being able to publish the full trial results,</p> |
| <p style="text-align: right;">330</p> <p>1 it with people. That's just my view.<br/>2 Q. Uh-huh. In light of the criticisms<br/>3 that have been leveled at you subsequent to 2002<br/>4 with respect to the homeopathy trial, with<br/>5 respect to the chondroitin article, with respect<br/>6 to Vioxx, with respect to hylan, does that change<br/>7 your view of how -- well, strike that.<br/>8 In light of all of those criticisms,<br/>9 if you were to write the BMJ editorial today, the<br/>10 one about the CLASS study, would you have written<br/>11 it the same way?<br/>12 MR. SAHAM: Objection to form.<br/>13 THE WITNESS: I need to look at it<br/>14 just a moment. In between my -- just my general<br/>15 attitude is towards this is we're publishing<br/>16 papers hopefully sometimes in major journals and<br/>17 we're generating debate.<br/>18 And the point that something is to a<br/>19 certain extent controversial actually indicates<br/>20 that we have some echo and some impact, which I<br/>21 take as a good sign.<br/>22 So I personally take a</p> | <p style="text-align: right;">332</p> <p>1 because I think when it comes to itemized control<br/>2 trials, you need to be more catholic than the<br/>3 Pope, it's a bad example nowadays with what<br/>4 happened, but you know what I mean.<br/>5 BY MR. WEISS:<br/>6 Q. Uh-huh.<br/>7 A. And in terms of really following the<br/>8 protocol, there's no other study design where you<br/>9 need to -- where we need to be that uptight. We<br/>10 always should be uptight, but especially if it<br/>11 comes to --<br/>12 Q. Uh-huh.<br/>13 A. But let me quickly have a look and,<br/>14 you know, tell you what I think actually --<br/>15 Q. Uh-huh. And two things, I'm not<br/>16 asking about your substantive conclusions.<br/>17 A. Not about my --<br/>18 Q. Your substantive conclusions.<br/>19 A. Okay. What are the substantive<br/>20 conclusions? What do you mean by that, the main<br/>21 conclusions?<br/>22 Q. Generally I'm not asking about what</p>                                                                                                            |



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| <p style="text-align: right;">333</p> <p>1 you're trying to convey.</p> <p>2 A. Uh-huh.</p> <p>3 Q. I'm asking about how you convey it.</p> <p>4 A. Uh-huh. You mean just the specific</p> <p>5 statements, the quality of the --</p> <p>6 Q. The language that you use, so on and</p> <p>7 so forth.</p> <p>8 A. Okay. But, let me -- if you give me</p> <p>9 two minutes or so, that's good.</p> <p>10 Q. Yes. Sure.</p> <p>11 MR. SAHAM: Objection to form.</p> <p>12 THE WITNESS: Okay. I'm ready.</p> <p>13 Looking at that, I notice that I became less</p> <p>14 rebellious than perhaps eight years ago. I'm not</p> <p>15 sure whether this is actually related to the work</p> <p>16 and the feedbacks I got.</p> <p>17 This is more related to, you know,</p> <p>18 eight years later basically after my wife fell</p> <p>19 ill, et cetera. I just was shown that there are</p> <p>20 just, you know, more important aspects to life</p> <p>21 than clinical research, that life is basically</p> <p>22 too short.</p>                                                                                 | <p style="text-align: right;">335</p> <p>1 would slightly make nowadays. But, in the light</p> <p>2 of life, but not in the light of clinical</p> <p>3 research, I think.</p> <p>4 Q. Uh-huh. Well, let me ask you this</p> <p>5 and moving on, back to <u>Exhibit 13</u>, the next</p> <p>6 letter is a letter from Michel Lievre and Eric</p> <p>7 Abadie on behalf of the French Marketing</p> <p>8 Authorizing Committee. Do you see that?</p> <p>9 A. Uh-huh, yes.</p> <p>10 Q. And they say, quote "Peter Juni and</p> <p>11 colleagues conclude health authorities should</p> <p>12 have withdrawn rofecoxib several years before the</p> <p>13 APPROVe study results were made available in</p> <p>14 September, 2004.</p> <p>15 "Since we have been involved in the</p> <p>16 assessment of the cardiovascular safety of</p> <p>17 rofecoxib the request of the Agence Francaise de</p> <p>18 Securite Sanitaire des Produits de Sante" -- I'm</p> <p>19 just going to say AFSsPS, "We feel compelled to</p> <p>20 respond to what could be interpreted as an</p> <p>21 accusation of incompetence.</p> <p>22 "In fact, that the available</p> |
| <p style="text-align: right;">334</p> <p>1 I would look at things perhaps more</p> <p>2 moderate. So, for instance, in the second page I</p> <p>3 wrote "Two issues cause concern, first is the</p> <p>4 author's explanation for these serious</p> <p>5 irregularities were inadequate" and I would drop</p> <p>6 the serious.</p> <p>7 Then I would probably just be more</p> <p>8 humble in indicating -- where was that,</p> <p>9 "publishing and distributing overoptimistic</p> <p>10 short-term data using post hoc changes, et</p> <p>11 cetera, is misleading." Today I would say is</p> <p>12 problematic, you know, just be a bit more</p> <p>13 conservative there.</p> <p>14 And, the last I would again drop the</p> <p>15 seriously biased and say in December of 2001, for</p> <p>16 example, "most of 58 physicians attending an</p> <p>17 Osteoarthritis Workshop in Bern, Switzerland in</p> <p>18 December of 2001 had not realized that CLASS was</p> <p>19 biased or may have been biased."</p> <p>20 BY MR. WEISS:</p> <p>21 Q. Okay.</p> <p>22 A. I think that's the statements that I</p> | <p style="text-align: right;">336</p> <p>1 evidence proves that the risk of myocardial</p> <p>2 infarction is increased by rofecoxib compared</p> <p>3 with placebo is unclear."</p> <p>4 So do you understand that they're</p> <p>5 disagreeing with the conclusions of your</p> <p>6 meta-analysis?</p> <p>7 A. Unsurprisingly so they feel accused,</p> <p>8 yes.</p> <p>9 Q. They go on to say at the bottom,</p> <p>10 "Juni and colleagues excluded from their analyses</p> <p>11 the placebo-controlled studies done in patients</p> <p>12 with Alzheimer's disease which is not acceptable.</p> <p>13 "The files submitted by Merck, by</p> <p>14 request of the French authorities, contained the</p> <p>15 results of three studies in Alzheimer's disease,</p> <p>16 which contributed 28 myocardial infarctions,</p> <p>17 compared with the total of 64 in the</p> <p>18 meta-analysis (including probably 24 from</p> <p>19 VIGOR)." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And do you understand them to be</p> <p>22 suggesting that your decision not to include</p>                                                          |

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| <p style="text-align: right;">337</p> <p>1 these trial results affected the results of your<br/>2 meta-analysis?</p> <p>3 A. No. They didn't suggest that this<br/>4 affected it, but they were suggesting that not to<br/>5 include Alzheimer's disease was unacceptable.</p> <p>6 Q. Uh-huh.</p> <p>7 A. Again, if we had included the<br/>8 Alzheimer's disease trial, we would have deviated<br/>9 from our protocol. Our protocol was prespecified<br/>10 to include only natural (inaudible).</p> <p>11 In the response to these trials, we<br/>12 did an additional analysis. Also, as far as I<br/>13 remember, I would have to look at the, you know,<br/>14 at the exhibit, but, as far as I remember, there<br/>15 we also included the Alzheimer trials to show<br/>16 what actually was happening and we found the same<br/>17 sort of pattern in terms of the signal.</p> <p>18 Q. Uh-huh. So you're saying that your<br/>19 failure to include the results from the<br/>20 Alzheimer's trial didn't affect your conclusion?</p> <p>21 A. Well, I don't know. I would need to<br/>22 look first at our -- at our response. But, the</p> | <p style="text-align: right;">339</p> <p>1 having inspected the data first and then based on<br/>2 that do the amendment.</p> <p>3 Q. And you think that people would<br/>4 consider that inappropriate, to amend your<br/>5 protocol to include additional data, even where<br/>6 you believe that that data was highly relevant<br/>7 and important to the analysis that you were<br/>8 doing?</p> <p>9 MR. SAHAM: Objection to form.</p> <p>10 THE WITNESS: We -- you know, for us<br/>11 it was clear that we just follow the protocol as<br/>12 it was. We weren't considering that. And we<br/>13 were ready then in the correspondence section of<br/>14 The Lancet to address this point.</p> <p>15 But, at the time that we planned<br/>16 this analysis, this meta-analysis, we never ever<br/>17 thought about that, because the scope of this<br/>18 analysis was patients with musculoskeletal<br/>19 conditions and that's all.</p> <p>20 BY MR. WEISS:</p> <p>21 Q. So, if you were doing a study and<br/>22 just before you published that study a different</p> |
| <p style="text-align: right;">338</p> <p>1 point is it wasn't the failure, but it was the<br/>2 prespecified selection criteria that we had to<br/>3 follow.</p> <p>4 Q. Uh-huh.</p> <p>5 A. We couldn't deviate from the<br/>6 protocol. We couldn't violate our own protocol.</p> <p>7 Q. Did you know that these studies<br/>8 existed at the time that you were doing the<br/>9 study?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. You could have amended the protocol,<br/>12 correct?</p> <p>13 A. Yes. But this is something which is<br/>14 considered by certain people to be quite<br/>15 problematic, you know. We talk about the<br/>16 systematic review which is already observational<br/>17 in nature.</p> <p>18 And that just based on inspection of<br/>19 the data, to deviate from the protocol and have<br/>20 an amendment of the protocol is deemed to be<br/>21 quite problematic because of that.</p> <p>22 We could have, you know, accused of</p>                                                                                                                                                                                  | <p style="text-align: right;">340</p> <p>1 study was released which completely contradicted<br/>2 your conclusion, would you nevertheless go ahead<br/>3 and publish your study?</p> <p>4 MR. SAHAM: Objection to form.</p> <p>5 THE WITNESS: Are we talking about<br/>6 primary study, a clinical trial, or a<br/>7 meta-analysis?</p> <p>8 BY MR. WEISS:</p> <p>9 Q. Fair enough. We're talking about a<br/>10 meta-analysis.</p> <p>11 A. A meta-analysis. And I would still<br/>12 publish it, because we have performed it and<br/>13 there is an obligation to publish. There's an<br/>14 ethical obligation, yes.</p> <p>15 Q. You think there's an ethical<br/>16 obligation to publish a meta-analysis?</p> <p>17 A. When you finish it and when it's<br/>18 there, I think that we should have -- just an<br/>19 obligation to make results available to the<br/>20 public. I mean, if it's just on a website as a<br/>21 PDF or whatever, so be it.</p> <p>22 But -- or that you then just do an</p>                                                                  |

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| <p style="text-align: right;">341</p> <p>1 update of the analysis, it's a meta-analysis.<br/> 2 But, once you finish the work and have written it<br/> 3 up, I think you should continuously also try to<br/> 4 publish it, yes.<br/> 5 Q. Uh-huh. So that you think you<br/> 6 should publish it even if you knew, for example,<br/> 7 that the results of a trial that had just been<br/> 8 published would materially alter the results of<br/> 9 your study?<br/> 10 A. Ah, you mean now -- I thought you<br/> 11 were referring to another meta-analysis, you<br/> 12 know, that wasn't complicated.<br/> 13 So you say, there's -- we have<br/> 14 finished our meta-analysis, there is a new trial<br/> 15 coming up.<br/> 16 Q. A new clinical trial has just been<br/> 17 reported.<br/> 18 A. Okay. And now, we have frequently<br/> 19 this problem that we then say -- I should then<br/> 20 say, okay we do an update search.<br/> 21 The trial still, you know, fulfills<br/> 22 our selection criteria. But do an update search</p>                                                                                                                                                  | <p style="text-align: right;">343</p> <p>1 should have been made public, then they should be<br/> 2 held accountable.<br/> 3 "But this meta-analysis does not<br/> 4 provide such evidence and is an example of<br/> 5 retrospective data manipulation," close quote.<br/> 6 A. Okay.<br/> 7 Q. Do you agree with that criticism?<br/> 8 A. Sorry.<br/> 9 Q. Do you agree with that criticism?<br/> 10 A. No.<br/> 11 Q. Okay. So you don't think that you<br/> 12 retrospectively manipulated the date?<br/> 13 A. Well, I know that we didn't<br/> 14 retrospectively manipulate the data.<br/> 15 Q. Uh-huh.<br/> 16 A. I know we processed data in a<br/> 17 prespecified way and did not deviate from the<br/> 18 protocol. There wasn't any data in that<br/> 19 information. Some of these statements are really<br/> 20 rather rich, so you need to have skin like an<br/> 21 elephant.<br/> 22 Q. And you know that, of course,</p>                                                 |
| <p style="text-align: right;">342</p> <p>1 so my people then moan and groan actually and<br/> 2 say, okay, another two months of work and we<br/> 3 still include it or we don't include it.<br/> 4 And we -- it's correctly stipulated<br/> 5 that the search date, you know, when we closed<br/> 6 the search, it was then, and then. And in the<br/> 7 discussion section, we just indicate that after,<br/> 8 you know, we have closed the searches, this trial<br/> 9 was becoming available, et cetera.<br/> 10 Q. Uh-huh. In your meta-analysis<br/> 11 regarding Vioxx, did you disclose the existence<br/> 12 of these other trials that people have criticized<br/> 13 you for not including?<br/> 14 A. I don't know. They didn't -- that's<br/> 15 important, they didn't qualify, because they were<br/> 16 not a patient. So they were beyond our study<br/> 17 selection. I wouldn't know. I would need to<br/> 18 look at our paper on how we acknowledged it.<br/> 19 Q. Okay. Finally, I'll ask you to turn<br/> 20 to Page 25, and this is a letter from Jack<br/> 21 Nyberg, and the last paragraph says "If further<br/> 22 evidence shows that Merck had information that</p> | <p style="text-align: right;">344</p> <p>1 because you are involved in doing the analysis<br/> 2 for the meta-analysis, correct, that you<br/> 3 published?<br/> 4 A. Let me see who did this analysis.<br/> 5 Let me quickly see where who was on there.<br/> 6 Q. I'm talking about your<br/> 7 meta-analysis.<br/> 8 A. Yeah, yeah. But I'm just thinking<br/> 9 about who was involved in the analysis. It<br/> 10 was -- the meta-analysis was performed by me and<br/> 11 Matthias Egger.<br/> 12 Q. Right. So you testified that you<br/> 13 know that there was no retrospective data<br/> 14 manipulation, and I'm asking you, you know that<br/> 15 because you were involved in the process that led<br/> 16 to the publication of that paper, correct?<br/> 17 A. Correct.<br/> 18 Q. Correct. And you know because you<br/> 19 were involved in writing the paper, correct?<br/> 20 A. Uh-huh.<br/> 21 Q. And you were involved in following<br/> 22 the protocol, correct?</p> |

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| <p>1 A. Correct.</p> <p>2 Q. And you were in the room when you</p> <p>3 and your colleagues were discussing what the</p> <p>4 publication should look like or what information</p> <p>5 should be included, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay.</p> <p>8 MR. WEISS: I ask the reporter to</p> <p>9 mark as Defendants' Exhibit 14 this document.</p> <p>10 THE WITNESS: At least somebody</p> <p>11 knows my work, that's nice, okay. Good.</p> <p>12 (Defendants' Exhibit Number 14</p> <p>13 marked for identification.)</p> <p>14 BY MR. WEISS:</p> <p>15 Q. Dr. Juni, we've just marked, as</p> <p>16 Defendants' Exhibit 14, an article published in</p> <p>17 Age and Aging called, "Older people should NOT be</p> <p>18 prescribed 'coxibs' in place of conventional</p> <p>19 NSAIDs." Is this a document that you authored?</p> <p>20 A. Yes. I coauthored this with my</p> <p>21 colleague, Paul Dieppe.</p> <p>22 Q. Okay. And I'm going to ask you to</p>                                                                                                                                       | <p>345</p> <p>1 A. Okay. Let's have a look. If it</p> <p>2 comes to age, I think that's correct. It's</p> <p>3 something that we're currently trying randomized</p> <p>4 trials also to include the very elderly patients,</p> <p>5 very elderly patients.</p> <p>6 As to, you know, represent the</p> <p>7 clinical spectrum actually receiving the therapy</p> <p>8 in routine clinical practice. We call that</p> <p>9 all-comer trials.</p> <p>10 Q. What is the mean age of the patients</p> <p>11 that were included in the CLASS trial according</p> <p>12 to Wolfe Exhibit 15, Page 27?</p> <p>13 A. The mean age is 60.</p> <p>14 Q. Okay. And so you don't consider</p> <p>15 those to be older people?</p> <p>16 A. Well, they're not very old and they</p> <p>17 do not, you know, represent -- are not, you know,</p> <p>18 reflecting the fact that probably the average age</p> <p>19 one would need to look at observational studies</p> <p>20 like the one by Ray and colleagues and Delong,</p> <p>21 the average age of patients who actually took</p> <p>22 these drugs would be more like 75 rather than 60.</p> |
| <p>346</p> <p>1 turn to the bottom of the first column on the</p> <p>2 first page, which says, "In our view, the</p> <p>3 pharmaceutical industry, presumably driven by the</p> <p>4 massive market for NSAIDs (they are now worth</p> <p>5 over US\$30 billion per year), have made several</p> <p>6 important mistakes during the development of</p> <p>7 coxibs, these include" and I'm going to go down</p> <p>8 to bullet "iii. Excluding older people and those</p> <p>9 at high risk of side-effects from the majority of</p> <p>10 trials, i.e. the practice of protectionism rather</p> <p>11 than inclusivity." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that criticism accurate with</p> <p>14 respect to the CLASS trial?</p> <p>15 A. I would need to look at Exhibit</p> <p>16 Wolfe 15 to have a look at that how what the age</p> <p>17 spectrum, et cetera, was.</p> <p>18 Out of my mind, I would assume that</p> <p>19 yes, but we quickly can have a look if you want</p> <p>20 me to.</p> <p>21 Q. Please. I think the table that I</p> <p>22 referred you to earlier was on Page 27.</p> | <p>348</p> <p>1 Q. And you're not testifying that 60 is</p> <p>2 the new 40, right?</p> <p>3 A. No. I'm not. But --</p> <p>4 Q. Now, the next criticism is that it</p> <p>5 excluded those of high risk of side effects.</p> <p>6 Is that criticism inaccurate with</p> <p>7 respect to the CLASS trial?</p> <p>8 A. I wouldn't remember how the event</p> <p>9 rates were for cardiovascular complications. I</p> <p>10 would need to look that up indeed. It depends a</p> <p>11 bit on that.</p> <p>12 It's clear that the event rates we</p> <p>13 had from myocardial infarction that are in the</p> <p>14 Merck, Sharp &amp; Dohme trials in rofecoxib had</p> <p>15 about, you know, were about 10 times lower event</p> <p>16 rates in the trials as compared with the routine</p> <p>17 clinical populations.</p> <p>18 Whether the same is the case in</p> <p>19 here, I wouldn't know out of my heart.</p> <p>20 Q. Was that something that you analyzed</p> <p>21 before making that statement in this article,</p> <p>22 Defendants' Exhibit 14?</p>                                                                     |

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| <p style="text-align: right;">349</p> <p>1 A. Well, here we are talking about</p> <p>2 coxibs in general. So we knew, or I know now,</p> <p>3 and I certainly knew at that time, that this was</p> <p>4 the case for rofecoxib.</p> <p>5 Whether this was also the case for</p> <p>6 celecoxib and whether I knew that at that time, I</p> <p>7 can't remember.</p> <p>8 Q. In the fourth bullet there you say,</p> <p>9 "In at least in one case, and possibly more,</p> <p>10 publishing data from trials that include analyses</p> <p>11 that are different from those specified in the</p> <p>12 protocol, and widely disseminating the resulting,</p> <p>13 misleading information." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. That's the reference -- the</p> <p>16 reference is a Footnote 9. That's a reference to</p> <p>17 your BMJ?</p> <p>18 A. Exactly.</p> <p>19 Q. Is it common practice in your</p> <p>20 industry to cite to yourself?</p> <p>21 A. Well, if you're referring to work</p> <p>22 that is relevant, indeed so, yes.</p>                                                            | <p style="text-align: right;">351</p> <p>1 A. Based on results by Warner and</p> <p>2 colleagues, which is lab research related to the</p> <p>3 COX 2 selectivity, the answer is yes, that there</p> <p>4 is no reason to expect, to presume different</p> <p>5 rates of serious gastrointestinal events.</p> <p>6 Q. Okay.</p> <p>7 A. Based on results that we are</p> <p>8 currently just summarizing and writing up, it</p> <p>9 could well be that there is an advantage. Again,</p> <p>10 that's research now, you know, eight years down</p> <p>11 the line, that there might be some advantage of</p> <p>12 celecoxib even over diclofenac despite this lab</p> <p>13 research.</p> <p>14 Q. Uh-huh.</p> <p>15 A. So, based on the overall body of</p> <p>16 data that has accumulated, you know, up to now --</p> <p>17 Q. Uh-huh.</p> <p>18 A. -- this is still preliminary.</p> <p>19 Q. Would that include the results of</p> <p>20 the CONDOR trial?</p> <p>21 A. This would include -- well, I'm not</p> <p>22 sure I'm confused now. CONDOR you say?</p> |
| <p style="text-align: right;">350</p> <p>1 Q. Okay. And then on Page 102 of this</p> <p>2 document, the page numbers on the bottom</p> <p>3 left-hand corner.</p> <p>4 A. Yes.</p> <p>5 Q. It says -- and I'm looking at the</p> <p>6 second column on the right-hand column, first</p> <p>7 full paragraph, last sentence, "Based on results</p> <p>8 by Warner et al, presented in Figure 3, there is</p> <p>9 no reason to presume different rates of serious</p> <p>10 cardiovascular events associated with celecoxib</p> <p>11 or diclofenac use, nor is there any reason for</p> <p>12 presume different rates of serious</p> <p>13 gastrointestinal events."</p> <p>14 Now, with respect to the last clause</p> <p>15 of that statement, is that still your view today,</p> <p>16 that there is no reason to presume different</p> <p>17 rates of serious gastrointestinal events between</p> <p>18 celecoxib and diclofenac?</p> <p>19 A. Actually I quickly need to find the</p> <p>20 sentence and read it.</p> <p>21 Q. Sorry. It's just above the</p> <p>22 paragraph that begins "Figure 4 presents."</p> | <p style="text-align: right;">352</p> <p>1 Q. Are you familiar with the CONDOR</p> <p>2 trial?</p> <p>3 A. I'm not sure anymore. Who was the</p> <p>4 first author -- was this the one which was</p> <p>5 recently published in The Lancet?</p> <p>6 Q. Uh-huh.</p> <p>7 A. So I wasn't aware of the acronym</p> <p>8 CONDOR.</p> <p>9 Q. Uh-huh.</p> <p>10 A. And I would need to look at the</p> <p>11 trial just to indicate that to you. I'm not --</p> <p>12 I'm not responsible.</p> <p>13 Q. The first author of Chan.</p> <p>14 A. Yes. Yes. Yes. Can I quickly</p> <p>15 have -- could you make an exhibit out of that --</p> <p>16 MR. WEISS: Why don't we mark this</p> <p>17 as Defendants' Exhibit 15.</p> <p>18 (Defendants' Exhibit Number 15</p> <p>19 marked for identification.)</p> <p>20 THE WITNESS: Then I can tell you</p> <p>21 whether it would qualify for this analysis.</p> <p>22 BY MR. WEISS:</p>                                                                                                                                         |



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| <p style="text-align: right;">353</p> <p>1 Q. This is just an abstract.</p> <p>2 A. That's fair enough.</p> <p>3 Q. Exhibit 15 is an abstract from The</p> <p>4 Lancet, of an article entitled "celecoxib Versus</p> <p>5 Omeprazole and Diclofenac in Patients With</p> <p>6 Osteoarthritis and Rheumatoid Arthritis (CONDOR):</p> <p>7 a Randomized Trial."</p> <p>8 A. So the trial was not qualified for</p> <p>9 this analysis. So the answer is it was not</p> <p>10 included by, because it was looking at diclofenac</p> <p>11 plus proton-pump inhibitor, omeprazole, also for</p> <p>12 a upper gastroprotective agent versus celecoxib,</p> <p>13 which would disfavor celecoxib in terms of, you</p> <p>14 know, our aim in this analysis of a pure</p> <p>15 comparison of COX 2 selective inhibitors with</p> <p>16 traditional NSAIDs, so it wasn't included.</p> <p>17 Q. So you have not reviewed the results</p> <p>18 of the CONDOR trial?</p> <p>19 A. I think my colleagues have actually</p> <p>20 reviewed results of the CONDOR trial. But I</p> <p>21 would not be sure that the manuscript, which is</p> <p>22 not completed, which is about to be completed in</p> | <p style="text-align: right;">355</p> <p>1 inhibitors, has changed since the publication of</p> <p>2 the CLASS trial and since the publication of the</p> <p>3 the RICO (ph.) trial.</p> <p>4 Q. And in what respect has it changed?</p> <p>5 A. It has changed that respect that,</p> <p>6 first of all, that I believe that all of the</p> <p>7 NSAIDs, whether COX 2 selective or not, have, to</p> <p>8 a certain extent, a problem with cardiovascular</p> <p>9 and with gastrointestinal toxicity.</p> <p>10 I think that at that time one</p> <p>11 overestimated the advantage that Rofecoxib had</p> <p>12 over traditional NSAIDs because naproxen is</p> <p>13 basically, in terms of gastrointestinal safety,</p> <p>14 the worst NSAID that you can have which really,</p> <p>15 you know, punches holes in a stomach in a way to</p> <p>16 a large extent.</p> <p>17 And that basically there may be for</p> <p>18 celecoxib, based on the results readdressed and</p> <p>19 included in the, in this network meta-analysis,</p> <p>20 that there may be just some advantage on</p> <p>21 gastrointestinal outcome spots. I can't remember</p> <p>22 right now out of my head what our results</p> |
| <p style="text-align: right;">354</p> <p>1 the next few weeks or the next month or so, so I</p> <p>2 would not be sure about the destiny of this</p> <p>3 article.</p> <p>4 But, just based on what I see here</p> <p>5 and what I heard, you know, from my colleagues,</p> <p>6 that it is the selection, that this trial would</p> <p>7 not have qualified.</p> <p>8 Q. Okay. But, besides whether or not</p> <p>9 it would have qualified for your analysis, would</p> <p>10 it have changed the view that you express in</p> <p>11 Defendants' Exhibit 14 that there is no reason to</p> <p>12 believe that Celebrex is safer than diclofenac in</p> <p>13 terms of serious gastrointestinal injury?</p> <p>14 A. So it's patients with a previous</p> <p>15 gastroduodenal observation -- let me quickly see.</p> <p>16 I am unable to tell from the abstract what the</p> <p>17 end point was.</p> <p>18 So -- and the interpretation of the</p> <p>19 data provided at the time point the pivotal CLASS</p> <p>20 trials were published would not have changed.</p> <p>21 My view into the safety profiles of</p> <p>22 different NSAIDs, including COX 2 selective</p>                | <p style="text-align: right;">356</p> <p>1 actually indicated for ulcer complications.</p> <p>2 Q. Uh-huh.</p> <p>3 A. So, in terms of ulcer complications,</p> <p>4 it could well be that still the book is open,</p> <p>5 that, you know, the estimates are too imprecise</p> <p>6 to come to firm conclusions.</p> <p>7 But by all means celecoxib would be</p> <p>8 among the safer, gastrointestinally safer in</p> <p>9 terms of NSAIDs, COX 2 selective or not, whereas</p> <p>10 naproxen clearly is the worst. But they all have</p> <p>11 trouble.</p> <p>12 Q. And one of the criticisms -- in your</p> <p>13 reply to the criticisms offered by many about</p> <p>14 your homeopathy article, you said and I quote "We</p> <p>15 also need to be prepared to accept the results of</p> <p>16 well-designed studies, even if they challenge our</p> <p>17 own fervently held beliefs."</p> <p>18 Do you subscribe to that admonition?</p> <p>19 A. Oh, yes, very much so. That's the</p> <p>20 reason why we are now writing up this network</p> <p>21 meta-analysis. This is research. Research is</p> <p>22 progressing.</p>                                                                        |



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| <p style="text-align: right;">357</p> <p>1 And the answers we get based on one<br/> 2 single study will never be the ultimate answers.<br/> 3 Things change over time and that's why we<br/> 4 actually progress in the medical field.<br/> 5 Q. Okay. Now, referring back to Wolfe<br/> 6 Exhibit 3, which is the JAMA article, I think you<br/> 7 testified earlier in sum or in substance that the<br/> 8 JAMA authors and the peer reviewers had no<br/> 9 information that there was more than six months<br/> 10 of data; is that correct?<br/> 11 MR. SAHAM: Objection to form.<br/> 12 THE WITNESS: That there was more<br/> 13 than six months data amenable to analysis at the<br/> 14 time the manuscript was submitted, that is<br/> 15 correct.<br/> 16 BY MR. WEISS:<br/> 17 Q. Well, could you explain to me what<br/> 18 you mean by more than six months data that was<br/> 19 amenable to analysis?<br/> 20 A. Well, that actually the protocol was<br/> 21 allowing for a longer term analysis and that the<br/> 22 data actually was ready, meaning the monitoring</p> | <p style="text-align: right;">359</p> <p>1 paper was published, that there was longer term<br/> 2 data available that could have been included in<br/> 3 the analysis.<br/> 4 I disagree with this notion. The<br/> 5 article makes clear, however, that the protocol<br/> 6 specified continuous follow-up and is not clear,<br/> 7 as far as I remember, but let me just see how<br/> 8 long this takes, they write "after a baseline<br/> 9 visit, follow-up clinic visits took place at<br/> 10 weeks four, 13, and 26 after the initial dose of<br/> 11 medication and every 13 weeks thereafter."<br/> 12 Now, this is a situation we are<br/> 13 having in many trials here. In our stent trials,<br/> 14 we're following patients up, up to five years.<br/> 15 The primary end point is typical at nine months.<br/> 16 So the primary publication we do is<br/> 17 for nine months and everybody knows that we<br/> 18 follow-up patients after five years and many<br/> 19 clinical epidemiologists would have interpreted<br/> 20 these statements accordingly.<br/> 21 BY MR. WEISS:<br/> 22 Q. Do you see the next sentence, it</p> |
| <p style="text-align: right;">358</p> <p>1 was finished, the events were adjudicated and the<br/> 2 data was ready to go for the analysis.<br/> 3 Q. Okay. So do you agree with me that<br/> 4 the CLASS article actually discloses that there<br/> 5 is more than six months of data from the trial?<br/> 6 MR. SAHAM: Objection to form.<br/> 7 Misstates prior testimony. Mischaracterizes the<br/> 8 testimony.<br/> 9 MR. WEISS: I didn't even<br/> 10 characterize the testimony. I said do you agree<br/> 11 with me.<br/> 12 MR. SAHAM: Asked and answered.<br/> 13 THE WITNESS: Okay. I will have a<br/> 14 look and tell you whether I agree or disagree<br/> 15 with this statements. Okay. How was the<br/> 16 question again?<br/> 17 (Record read.)<br/> 18 THE WITNESS: And I would need you<br/> 19 to be more specific or I can -- I -- I answer the<br/> 20 question with a qualifying remark there.<br/> 21 And I disagree with you that the<br/> 22 article makes clear that at the time point this</p>                                                                | <p style="text-align: right;">360</p> <p>1 says "All patients were provided an opportunity<br/> 2 to complete a minimum of six months of<br/> 3 treatment." Do you see that?<br/> 4 A. Yes.<br/> 5 Q. Does that indicate to you that<br/> 6 patients in the trial had more than six months of<br/> 7 treatment?<br/> 8 A. Well, it's not specific. And it<br/> 9 indicates that they could have longer durations<br/> 10 of treatment, yes.<br/> 11 Q. Just by use of the word minimum,<br/> 12 correct?<br/> 13 A. Yes. Indeed. Indeed.<br/> 14 Q. Okay. Have you ever been a peer<br/> 15 reviewer for any journals?<br/> 16 A. Yes, I have.<br/> 17 Q. And let me ask you this question:<br/> 18 If you had received this manuscript and you had<br/> 19 read the language that you just pointed to,<br/> 20 "Beginning after a baseline visit, follow-up<br/> 21 clinic visits took place at Weeks 4, 13, 26,<br/> 22 after the initial dose of medication and every</p>                                                                                                                                                                      |

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| <p style="text-align: right;">361</p> <p>1 13 weeks thereafter, all patients were provided</p> <p>2 an opportunity to complete a minimum of six</p> <p>3 months of treatment," how would you have</p> <p>4 responded?</p> <p>5 A. I don't know.</p> <p>6 Q. Would you have asked a question</p> <p>7 about that?</p> <p>8 A. Let me quickly see. You know, for</p> <p>9 me, it's very difficult to respond to this</p> <p>10 question in an unbiased manner, knowing what I</p> <p>11 know today.</p> <p>12 I can tell you perhaps and then I</p> <p>13 have a look at the statement here that quite</p> <p>14 frequently when I peer review, I ask myself do I</p> <p>15 miss something in terms of, you know, data being</p> <p>16 not reported.</p> <p>17 I ask that myself nowadays. If I</p> <p>18 had been the peer reviewer at that time, I think</p> <p>19 I would have missed it in 2001.</p> <p>20 Q. You don't think, as a peer reviewer,</p> <p>21 this would have indicated to you that there was</p> <p>22 more data?</p>                                                                        | <p style="text-align: right;">363</p> <p>1 Q. Okay. Well, do you have any</p> <p>2 knowledge of the communications between the</p> <p>3 authors and the editors at JAMA at the time that</p> <p>4 the article was submitted?</p> <p>5 A. That's why we ask -- that's why I,</p> <p>6 you know, I directly discuss the points, the</p> <p>7 notion with Drum and Drennan at that time.</p> <p>8 Q. But, what about Margaret Winker,</p> <p>9 have you ever talked to her?</p> <p>10 A. No.</p> <p>11 Q. No. And so you've never seen the</p> <p>12 communications from the authors and the JAMA</p> <p>13 editors?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 A. This was --</p> <p>17 Q. Would your view or would your</p> <p>18 testimony be different if hypothetically a JAMA</p> <p>19 editor had asked one of the authors whether there</p> <p>20 was more than six months of data and the answer</p> <p>21 to that question was yes?</p> <p>22 MR. SAHAM: Objection to form.</p>                             |
| <p style="text-align: right;">362</p> <p>1 A. Well, that's things, you know, we're</p> <p>2 doing a lot of peer reviews and it is notoriously</p> <p>3 difficult to bring everything to the point and to</p> <p>4 grasp every single potential criticisms.</p> <p>5 I'm not sure whether I would have</p> <p>6 picked it up or not. I generally answer it and I</p> <p>7 can't tell. I always hope and I know</p> <p>8 peer-reviewing major trials that I pick up these</p> <p>9 things. I can't be sure.</p> <p>10 Q. Okay. You testified earlier, in sum</p> <p>11 or in substance, that the JAMA editors were</p> <p>12 completely unaware that there was more than six</p> <p>13 months of data?</p> <p>14 A. Yes.</p> <p>15 Q. How do you know that?</p> <p>16 A. Because I was talking to presumably</p> <p>17 it was Drum and Drennan, about this. So this was</p> <p>18 a personal statement for one, when I remember</p> <p>19 that correctly.</p> <p>20 But I think there was also -- they</p> <p>21 could also have been a statement actually in</p> <p>22 JAMA. I wouldn't be sure about that.</p> | <p style="text-align: right;">364</p> <p>1 THE WITNESS: I quickly have to look</p> <p>2 at how we stipulated that and then I answer your</p> <p>3 question.</p> <p>4 When we state here, and I'm not sure</p> <p>5 whether this was an appropriate reference, that</p> <p>6 they were neither referred to in the article nor</p> <p>7 reported to JAMA, we actually refer to the reply</p> <p>8 Silverstein and colleagues made in JAMA, when six</p> <p>9 versus 12-month data were actually discussed</p> <p>10 there.</p> <p>11 So I would need to have a look into</p> <p>12 that.</p> <p>13 BY MR. WEISS:</p> <p>14 Q. Right. But I'm -- what I'm asking</p> <p>15 you is simply to assume that it's true.</p> <p>16 A. Yes.</p> <p>17 Q. That one of the authors told one of</p> <p>18 the JAMA copy editors that there was, in fact,</p> <p>19 more than six months of data.</p> <p>20 MR. SAHAM: Objection to form.</p> <p>21 Foundation. Improper hypothetical.</p> <p>22 THE WITNESS: So is it the copy</p> |

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| <p style="text-align: right;">365</p> <p>1 editor or is it the editor? If it was one of the<br/> 2 editor or deputy editors who are academically in<br/> 3 charge --<br/> 4 BY MR. WEISS:<br/> 5 Q. Uh-huh.<br/> 6 A. -- that's a different situation from<br/> 7 that what you've just indicated that it was one<br/> 8 of the copy editors. Who are you referring to?<br/> 9 MR. SAHAM: Objection to form,<br/> 10 foundation.<br/> 11 BY MR. WEISS:<br/> 12 Q. Let's take either, let's start with<br/> 13 the editors or the deputy editors.<br/> 14 MR. SAHAM: Objection to form,<br/> 15 foundation.<br/> 16 THE WITNESS: Okay. So these<br/> 17 were -- so if this is about an academically<br/> 18 trained editor who is in charge academically of<br/> 19 the journal like Drum and Drennan as I've just<br/> 20 indicated, if some of them would have known, I<br/> 21 would look at this differently.<br/> 22 BY MR. WEISS:</p>                                                                                                                     | <p style="text-align: right;">367</p> <p>1 Whereas the smaller specialist<br/> 2 journals, typically or quite frequently do a<br/> 3 second round. So all the authors' peer review<br/> 4 comments come back and then they will be sent out<br/> 5 again to the peer reviewers.<br/> 6 BY MR. WEISS:<br/> 7 Q. But what's the point of having peer<br/> 8 reviewer comments and responses from the authors,<br/> 9 if the peer reviewers don't get to comment on the<br/> 10 authors' responses.<br/> 11 MR. SAHAM: Objection to form.<br/> 12 THE WITNESS: The point is, in my<br/> 13 point of view at least, that the degree of<br/> 14 professionalism, this also means this exposition<br/> 15 time an editor has with a specific manuscript<br/> 16 that is considered for publication, is<br/> 17 considerably higher in the major journals like<br/> 18 JAMA, Lancet or BMJ as compared to the specialist<br/> 19 journals.<br/> 20 So, if I'm doing my editing tasks,<br/> 21 you know, for the specialists' journals, I<br/> 22 typically do that in my free time. I have very</p> |
| <p style="text-align: right;">366</p> <p>1 Q. Let me ask you this question.<br/> 2 A. If it's a copy editor, I would say<br/> 3 no. It's not different because the copy editor<br/> 4 isn't qualified to understand the problem.<br/> 5 Q. Okay. Just explain to me the<br/> 6 process regarding the incorporation of peer<br/> 7 review comments.<br/> 8 When you're a peer reviewer and you<br/> 9 pose some questions about an article that you<br/> 10 want the authors to answer and it's presumably<br/> 11 transmitted through the editors to the authors,<br/> 12 correct?<br/> 13 A. Correct.<br/> 14 Q. And then their -- the authors'<br/> 15 replies to your questions, are they routed back<br/> 16 to you from the authors so that you see the<br/> 17 authors' answers to your questions?<br/> 18 MR. SAHAM: Objection to form.<br/> 19 THE WITNESS: It depends on the<br/> 20 journal. So typically the large journals, like<br/> 21 BMJ, JAMA, Lancet, don't do a second round. So<br/> 22 they're not routed back to the peer reviewers.</p> | <p style="text-align: right;">368</p> <p>1 little time.<br/> 2 If you submit a paper in the New<br/> 3 England Journal of Medicine, the editor has an<br/> 4 exposition time of 20 hours, perhaps, for a<br/> 5 specific piece of work. And something which is<br/> 6 also important is the time frame that is rather<br/> 7 short for the major journals.<br/> 8 So the normally, probably the<br/> 9 assumption is, that's my interpretation, I've<br/> 10 never been an editor of one of the major<br/> 11 journals, the assumption is that there is not<br/> 12 enough time to have a second round of peer<br/> 13 reviewer comments and that the editor himself or<br/> 14 herself has enough resources, time and experience<br/> 15 to appropriately weigh the answers to reviewers<br/> 16 comments.<br/> 17 BY MR. WEISS:<br/> 18 Q. But who's responsible for taking the<br/> 19 authors' responses to the peer reviewer's<br/> 20 comments and addressing them in the article<br/> 21 somehow?<br/> 22 A. Sorry. Can you repeat the question.</p>                                  |

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| <p style="text-align: right;">369</p> <p>1 Who's responsible --<br/> 2 (Record read.)<br/> 3 THE WITNESS: So basically<br/> 4 responsible for taking aboard the peer reviewer<br/> 5 comments of the authors, who should do a<br/> 6 point-by-point discussion and a track change<br/> 7 version of the manuscript and these should be<br/> 8 sent back to editors.<br/> 9 And it is ultimately the editor who<br/> 10 decides A, whether the second round of peer<br/> 11 reviews is necessary and whether the comments<br/> 12 were addressed appropriately and see whether, in<br/> 13 the light of everything which is known about the<br/> 14 manuscript now, the manuscript deserves<br/> 15 consideration for publication in the journal.<br/> 16 Q. Have you ever had a conversation<br/> 17 with Joy Jaeger of JAMA?<br/> 18 A. What's her name?<br/> 19 Q. Joy Jaeger, J-A-E-G-E-R.<br/> 20 A. No. I don't know who this is.<br/> 21 Q. Okay. Have you ever done any<br/> 22 research on the issue of informative censoring?</p> | <p style="text-align: right;">371</p> <p>1 informative censoring. That's one of the<br/> 2 aspects.<br/> 3 Q. Was that addressed specifically in<br/> 4 the paper that you refer to?<br/> 5 A. No. No. No. Just as one of the<br/> 6 points.<br/> 7 Q. Okay. Earlier we talked, or you and<br/> 8 Mr. Saham talked, about the alternate definition<br/> 9 that was in the protocol for the primary end<br/> 10 point. Do you recall that?<br/> 11 A. Yes.<br/> 12 Q. And do you recall what the protocol<br/> 13 said about that analysis and when it was to be<br/> 14 done?<br/> 15 A. No.<br/> 16 Q. Okay. Do you recall that the<br/> 17 protocol provided that if you failed to meet the<br/> 18 primary end point with respect to the traditional<br/> 19 definition, you didn't proceed to do an analysis<br/> 20 of the alternative end point?<br/> 21 MR. SAHAM: Objection to form.<br/> 22 Foundation.</p>                                                                                            |
| <p style="text-align: right;">370</p> <p>1 A. Research, methodological research on<br/> 2 the issue of informative censoring --<br/> 3 Q. Yes.<br/> 4 A. No.<br/> 5 Q. Have you ever written any articles<br/> 6 on informative censoring?<br/> 7 A. To a certain extent, yes. Let me<br/> 8 qualify this statement. We recently had a BMJ<br/> 9 paper on attrition bias, meaning bias introduced<br/> 10 by exclusion of patients from the analysis.<br/> 11 And some of that could also address<br/> 12 informative censoring. But I never did a piece<br/> 13 of research that particularly looked into<br/> 14 informative censoring.<br/> 15 Q. Right. But the paper that you've<br/> 16 just described really had to do with attrition as<br/> 17 a result of censoring, correct?<br/> 18 A. Our paper?<br/> 19 Q. Yes.<br/> 20 A. No. This paper was about any<br/> 21 exclusions of patients from the analysis. But<br/> 22 this could also, you know, address the problem of</p>                                                 | <p style="text-align: right;">372</p> <p>1 THE WITNESS: I think I remember<br/> 2 that, that the -- if it failed, I -- I'm about<br/> 3 90 percent sure. If it failed for the<br/> 4 traditional definition, that one wouldn't pursue<br/> 5 for the alternate definition, full stop.<br/> 6 BY MR. WEISS:<br/> 7 Q. Okay. And then just getting back to<br/> 8 your, the issue that you raised about the<br/> 9 homogeneity and the heterogeneity issues that<br/> 10 might have resulted from the pooling of the<br/> 11 trials.<br/> 12 A. Yes.<br/> 13 Q. Do you recall reviewing what the<br/> 14 FDA's statistical reviewer had to say about that<br/> 15 issue?<br/> 16 A. Well, I recall having reviewed<br/> 17 extensively the FDA's statistical reviewer's<br/> 18 report, but I don't recall specifically what<br/> 19 you're referring to right now.<br/> 20 Q. Uh-huh. Do you recall that she did<br/> 21 not have a concern about any statistical issues<br/> 22 as a result of the pooling?</p> |

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| <p style="text-align: right;">373</p> <p>1 A. No, I don't recall that. And I<br/>2 would like to, if possible, like to have a look<br/>3 at that.<br/>4 Q. Okay. I will -- this has probably<br/>5 been marked before, but, so be it. My new review<br/>6 folder happens to be empty.<br/>7 MR. MONTGOMERY: Wasn't it already<br/>8 entered today?<br/>9 BY MR. WEISS:<br/>10 Q. Here it is, I'm sorry, it was.<br/>11 You're right, it was already entered as --<br/>12 A. Oh, yes, here it is. Statistical<br/>13 Review. Sorry.<br/>14 Q. Okay. I'll ask you to turn to<br/>15 Page 3.<br/>16 A. Okay.<br/>17 Q. And you see it says "III.2<br/>18 Demographics." And I'll read that into the<br/>19 record, it says "Baseline demographic<br/>20 characteristics, vital signs and GI risk factors<br/>21 are generally balanced between the treatment<br/>22 groups, detailed demographic information</p>                                                                                                                                                                      | <p style="text-align: right;">375</p> <p>1 virtue of the pooling of the two trials?<br/>2 A. Whether I have any idea about the<br/>3 way they used the statistical adjustments you're<br/>4 saying. That's the problem and by just pooling<br/>5 the way they did it, you know, the results, you<br/>6 may just end up in trouble there because a<br/>7 patient who was in Protocol 35 did have a zero<br/>8 probability to be randomized to diclofenac.<br/>9 Whereas a patient who was included<br/>10 in Protocol 102 did have a zero probability to be<br/>11 randomized to ibuprofen, and that's the basic<br/>12 problem that we're having.<br/>13 So, you know, this wasn't a random<br/>14 process that led people to one or the other<br/>15 protocol which makes things complicated.<br/>16 Now, if this is a first step towards<br/>17 the analysis in an approval process, even though<br/>18 we advise against it when we design a trial.<br/>19 I just had a discussion yesterday at<br/>20 the university about this. I strongly advised<br/>21 against this sort of approach there. And, you<br/>22 know, it can -- it's viable, it can be done as</p> |
| <p style="text-align: right;">374</p> <p>1 summarized in Tables A1 through A4 in<br/>2 Appendix A." Do you see that?<br/>3 A. Yes.<br/>4 Q. Okay. And that is -- that<br/>5 contradicts your conclusion that there were a<br/>6 number of statistically significant differences<br/>7 in the demographics between the studies?<br/>8 A. This is a comparison of the two<br/>9 celecoxib arms with the diclofenac arm and the<br/>10 ibuprofen arm that it's referring to there. So<br/>11 it would not be the appropriate one to look at.<br/>12 Q. And what would be the appropriate<br/>13 one to look at?<br/>14 A. I don't know. I would need to<br/>15 look -- honestly for this I would need to have<br/>16 more time and look into our own files and then I<br/>17 could tell you what this is referring to.<br/>18 Q. Okay. And do you have any<br/>19 understanding of what statistical adjustments may<br/>20 have been made in connection with the CLASS<br/>21 authors' analysis of the data to account for<br/>22 statistical problems that might result as -- by</p> | <p style="text-align: right;">376</p> <p>1 long as this is just the first and not the final<br/>2 step of it and as long as it follows the<br/>3 protocol.<br/>4 Q. Did you do any analysis or do you<br/>5 have any understanding of the clinical<br/>6 significance of the apparent or purported<br/>7 differences in the demographics that you<br/>8 identified in your letter to the editor of JAMA?<br/>9 MR. SAHAM: Objection to form.<br/>10 THE WITNESS: There is no clinical<br/>11 significance. There is methodological<br/>12 significance to that.<br/>13 Meaning since the -- this process<br/>14 was not a random process, you know, to end up in<br/>15 one trial or the other it would have been<br/>16 important just, you know, to separately as was,<br/>17 you know, following the protocol, to report and<br/>18 analyze just separately what was going on while<br/>19 fully respecting the approach towards controlling<br/>20 Type I error.<br/>21 BY MR. WEISS:<br/>22 Q. But, for example, if there was a</p>                                                                                                                               |

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| <p style="text-align: right;">377</p> <p>1 statistically significant difference in the<br/>2 number of patients with alcoholism in one trial<br/>3 versus the other trial --<br/>4 A. Yes.<br/>5 Q. -- and assuming that's not a risk<br/>6 factor for GI ulceration, why does it matter?<br/>7 A. It only matters because it indicates<br/>8 that these two trials were not part of the same<br/>9 randomization process. It doesn't matter<br/>10 clinically.<br/>11 It matters that these were two<br/>12 separate randomizations against two separate<br/>13 drugs that had different pharmacokinetics and<br/>14 pharmacodynamics as we know.<br/>15 Q. But the point is it doesn't<br/>16 necessarily bias or affect the results of the<br/>17 trial?<br/>18 A. Of the two trials?<br/>19 Q. The final analysis in whatever<br/>20 comparisons you want to draw.<br/>21 A. I disagree with this statement.<br/>22 Why, because these were not just, you know, two</p>                                                                                                                                                                                         | <p style="text-align: right;">379</p> <p>1 the use of alcohol, is not a risk factor for<br/>2 ulcer complication, then the fact that there were<br/>3 more alcohol users in one trial than in another<br/>4 trial would not affect the result?<br/>5 MR. SAHAM: Objection to form.<br/>6 THE WITNESS: Which result?<br/>7 BY MR. WEISS:<br/>8 Q. Whether -- whether or not there was<br/>9 a difference in the number of ulcer<br/>10 complications.<br/>11 A. I can't answer this question because<br/>12 the question doesn't address the problem. This<br/>13 analysis that we did on difference between the<br/>14 trials was only in view of demonstrating that<br/>15 there were two different randomization processes<br/>16 going on for Protocol 35 and Protocol 102.<br/>17 And that because of this very fact<br/>18 of the two different randomization processes<br/>19 naive adding up of events in the light of having<br/>20 different comparator drugs would be<br/>21 inappropriate.<br/>22 Q. Okay.</p> |
| <p style="text-align: right;">378</p> <p>1 stratified parts of the same trial.<br/>2 And the trial was analyzed as if<br/>3 it -- the trials were analyzed as if it were one<br/>4 single three on trial with one randomization<br/>5 process, so the patients having equal probability<br/>6 or at least some nominal probability to end up<br/>7 with any of the three treatments, and this wasn't<br/>8 the case for these patients and for this, for<br/>9 methodological reasons actually, it would be<br/>10 inappropriate to stick just to this first part<br/>11 without transparently reporting just the results<br/>12 separately for the two protocols.<br/>13 I'm not talking about the full<br/>14 statistical testing, you know, the hypothesis<br/>15 testing that they're doing. If they had stick to<br/>16 the first part and say, we failed, so we don't go<br/>17 on, they could still have reported just the<br/>18 results separately for the two randomized<br/>19 comparisons. These are separate randomized<br/>20 comparisons.<br/>21 Q. Right. But, if you would agree with<br/>22 me, and we'll say it hypothetically that alcohol,</p> | <p style="text-align: right;">380</p> <p>1 MR. WEISS: For the moment, subject<br/>2 to just some cleanup, I'm done with my<br/>3 examination.<br/>4 EXAMINATION<br/>5 BY MR. SAHAM:<br/>6 Q. I just have a few additional<br/>7 questions, Dr. Juni.<br/>8 You are -- are you an associate<br/>9 professor of clinical epidemiology tenured on the<br/>10 faculty of Bern University?<br/>11 A. Yes.<br/>12 Q. And what does it mean to be a<br/>13 clinical epidemiologist?<br/>14 A. It means that I'm being involved in<br/>15 the planning, conduct, analysis, and write-up of<br/>16 major clinical trials including randomized<br/>17 control trials, also approval trials, and<br/>18 diagnostic occurrences studies, cohort studies,<br/>19 methodological research and meta-analyses.<br/>20 Q. And how many peer-reviewed<br/>21 publications have you had in this area,<br/>22 approximately?</p>                                                                                                              |



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| <p>381</p> <p>1 A. In the area of clinical<br/>2 epidemiology, peer-reviewed original articles now<br/>3 must be around 75 or 80.<br/>4 Q. And who is Paul Dieppe?<br/>5 A. Paul Dieppe is one of the major<br/>6 rheumatologists. He used to be the editor of the<br/>7 reference textbook in rheumatology, and is one of<br/>8 the most eminent rheumatologists worldwide.<br/>9 Q. And he was one of your co-authors of<br/>10 Exhibit 32, the BMJ article?<br/>11 A. Correct.<br/>12 Q. And who is Anne Rutjes?<br/>13 A. Anne Rutjes is a clinical<br/>14 epidemiologist from Amsterdam Medical Center.<br/>15 Q. And approximately, turning back to<br/>16 yourself personally, how many times have you been<br/>17 cited in peer-reviewed journals?<br/>18 A. Overall, let me just check. This<br/>19 has increased I think we've had these numbers.<br/>20 Probably overall right now it will have<br/>21 approximated 4,800 to 5,000 times.<br/>22 Q. And do you know if Professor Dieppe</p>                                           | <p>383</p> <p>1 six-month treatment period?<br/>2 A. What is striking in the abstracts is<br/>3 that they're talking about during "the" six-month<br/>4 treatment period, not during "a" six-month<br/>5 treatment period.<br/>6 The six-month treatment period, in<br/>7 my view just indicates, for the purpose of the<br/>8 abstract we're talking about, that this was the<br/>9 prespecified treatment period that was to be<br/>10 looked at in the analysis.<br/>11 Q. And is it accurate that Wolfe<br/>12 Exhibit 3 does not disclose that almost all of<br/>13 the complicated ulcers experienced during the<br/>14 CLASS trial after six months were in the<br/>15 celecoxib treatment group?<br/>16 A. It is accurate to state so, yes.<br/>17 Q. And in your opinion was that<br/>18 misleading?<br/>19 A. In my opinion, this was misleading.<br/>20 It should have been, at the very least, reported<br/>21 in the publication to open up scientific debate.<br/>22 Q. Is it also accurate that Wolfe</p> |
| <p>382</p> <p>1 has been similarly cited in academic journals?<br/>2 A. Well, probably he has cited -- has<br/>3 been cited considerably more, yes.<br/>4 Q. And turning your attention back to<br/>5 the JAMA article we were discussing, were there<br/>6 facts omitted from that article?<br/>7 A. Yes. There were facts omitted.<br/>8 Q. And what facts were omitted from<br/>9 that article?<br/>10 A. It was omitted that there were --<br/>11 that the presented design and analysis was<br/>12 deviating from what was originally specified in<br/>13 two different protocols.<br/>14 In terms of A, the number of trials,<br/>15 one being published as a three-arm trial versus<br/>16 two being available as two-arm trials, the<br/>17 specification of the outcome, the length of<br/>18 follow-up, and the analytical approach towards<br/>19 controlling Type I error.<br/>20 Q. Looking at Wolfe Exhibit 3, the main<br/>21 outcome measure, is it accurate to describe the<br/>22 treatment period of the CLASS trial as a</p> | <p>384</p> <p>1 Exhibit 3 does not disclose that there was no<br/>2 difference with diclofenac in any of the<br/>3 comparisons looked at as part of the CLASS trial?<br/>4 MR. WEISS: Asked and answered.<br/>5 THE WITNESS: It is accurate, this<br/>6 statement, yes.<br/>7 BY MR. SAHAM:<br/>8 Q. And is that omission, in your<br/>9 opinion, also render -- strike that.<br/>10 Does that omission also, in your<br/>11 opinion, render the article misleading?<br/>12 A. Yes.<br/>13 Q. And does -- is it also accurate that<br/>14 Wolfe Exhibit 3, the JAMA article, does not<br/>15 disclose that diclofenac had a lower complicated<br/>16 ulcer event rate than Celebrex when you looked at<br/>17 the FDA alternative definition of complicated<br/>18 ulcer?<br/>19 A. That is correct, yes.<br/>20 Q. And, in your opinion, did that<br/>21 render Exhibit 3, the JAMA article, misleading?<br/>22 A. I'm just thinking quickly. In my</p>                                                                 |

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| <p style="text-align: right;">385</p> <p>1 opinion, it does render the article misleading,<br/> 2 keeping in mind that I'm referring to, especially<br/> 3 if it comes to this point with the alternate<br/> 4 definition, just to the FDA officer's written<br/> 5 reports.<br/> 6 And I haven't had, as correctly<br/> 7 pointed out by this man, I haven't had access<br/> 8 directly to the protocol. I couldn't be<br/> 9 100 percent sure how the protocol dealt with this<br/> 10 alternate definition.<br/> 11 Q. And why did you write the British<br/> 12 Medical Journal article, <u>Exhibit 32</u>, that we've<br/> 13 been discussing today?<br/> 14 A. We wrote it as a means of<br/> 15 communicating potential problems and as of a<br/> 16 means of promote -- as a means to promoting the<br/> 17 scientific debate and clinical debate about the<br/> 18 potential safety or the potential problems of<br/> 19 COX 2 selective inhibitors in general and<br/> 20 celecoxib in particular.<br/> 21 MR. SAHAM: I have no additional<br/> 22 questions.</p> | <p style="text-align: right;">387</p> <p>1 that the protocol prespecified that the<br/> 2 alternative definition was not to be analyzed if<br/> 3 the study failed the primary end point at the<br/> 4 traditional definition, correct?<br/> 5 MR. SAHAM: Objection to form.<br/> 6 Foundation.<br/> 7 THE WITNESS: Was not to be -- was<br/> 8 not to be fully -- sorry, I'm a bit tired.<br/> 9 BY MR. WEISS:<br/> 10 Q. I don't know why.<br/> 11 A. Was not to be undergoing statistical<br/> 12 testing. So I think it's two different aspects<br/> 13 whether or not you want to present the results,<br/> 14 the counts, and whether or not you want to do<br/> 15 formal statistical testing and just adhere to<br/> 16 conclusions, just do that.<br/> 17 Q. So then I think before you have<br/> 18 offered criticisms of the JAMA article on the<br/> 19 basis that the authors didn't follow the<br/> 20 prespecified statistical analysis, correct?<br/> 21 A. Yes.<br/> 22 Q. And now you're criticizing the</p> |
| <p style="text-align: right;">386</p> <p>1 MR. WEISS: Okay. I have two<br/> 2 minutes of just additional questions.<br/> 3 MR. SAHAM: Well, Josh, I mean,<br/> 4 you've already had, I mean, if you want to take<br/> 5 two more minutes, but you've already had five<br/> 6 hours.<br/> 7 You know, typically the examining<br/> 8 party gets to redirect and there's not a<br/> 9 reredirect.<br/> 10 But if it's only going to be two<br/> 11 minutes, go ahead.<br/> 12 EXAMINATION<br/> 13 BY MR. WEISS:<br/> 14 Q. You testified that you thought it<br/> 15 was misleading not to describe the results for<br/> 16 the alternative definition of the primary end<br/> 17 point and protocol, correct?<br/> 18 A. I testified that, but qualified it<br/> 19 as you have heard.<br/> 20 Q. Yes. I understand your<br/> 21 qualification.<br/> 22 And you also agreed with me before</p>                                                                                                                                                                               | <p style="text-align: right;">388</p> <p>1 authors of using misleading -- for following the<br/> 2 prespecified statistical analysis, correct?<br/> 3 MR. SAHAM: Objection to form.<br/> 4 THE WITNESS: I would need to look<br/> 5 at the medical and statistical reviewer's<br/> 6 comments just relating to this point.<br/> 7 BY MR. WEISS:<br/> 8 Q. Okay.<br/> 9 A. So, you know, I think it was<br/> 10 important just that I make this qualification to<br/> 11 my statement.<br/> 12 So it could well be that in the<br/> 13 light of statistical and medical reviewers that I<br/> 14 would, you know, qualify it further and then --<br/> 15 and disregard this point entirely. This is not<br/> 16 the major point.<br/> 17 Q. Fair enough. Last two questions.<br/> 18 Your position as a professor, you've<br/> 19 held that for one year, is that correct?<br/> 20 A. My -- let me just quickly see.<br/> 21 Where do I have it, somewhere here.<br/> 22 Q. Just -- you don't have to be exact,</p>             |

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| <p style="text-align: right;">389</p> <p>1 just roughly.</p> <p>2 A. Okay. No, here it is. So my</p> <p>3 position as an associate professor I've held for</p> <p>4 one year and four months now.</p> <p>5 Q. Okay. And then last question, as of</p> <p>6 the papers that you have written, the</p> <p>7 peer-reviewed publications that you have, what</p> <p>8 would you say is your estimate of the percentage</p> <p>9 of those papers that are write-ups of</p> <p>10 meta-analyses and statistical reviews on the one</p> <p>11 hand, versus write-ups of clinical trials that</p> <p>12 you were engaged in?</p> <p>13 A. It's difficult to estimate. I would</p> <p>14 need to have a look at my PubMed citations. Let</p> <p>15 me see. Currently I would say it's two-thirds</p> <p>16 original research and one-third meta-analyses.</p> <p>17 Q. And when you say original research,</p> <p>18 you say --</p> <p>19 A. This includes cohort studies,</p> <p>20 randomized controlled trials, diagnostic</p> <p>21 occurrences studies and methodological work,</p> <p>22 whereas about one-third is systematic reviews of</p> | <p style="text-align: right;">391</p> <p>1 also accurate that --</p> <p>2 MR. WEISS: I'll make it easy.</p> <p>3 We'll stipulate that the JAMA article says what</p> <p>4 it says and we can all go home.</p> <p>5 BY MR. SAHAM:</p> <p>6 Q. Well, I'll ask the question again.</p> <p>7 Is it accurate that the JAMA article</p> <p>8 failed to disclose that there was any difference</p> <p>9 between diclofenac and celecoxib in any of the</p> <p>10 comparisons made in CLASS?</p> <p>11 A. That there was not any difference.</p> <p>12 It failed to disclose that there was not any</p> <p>13 statistical difference -- statistically</p> <p>14 significant difference between celecoxib and</p> <p>15 diclofenac. This is correct.</p> <p>16 MR. SAHAM: Thank you very much for</p> <p>17 your time today, sir.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 THE VIDEOGRAPHER: Off the record at</p> <p>20 5:50 p.m.</p> <p>21 (Whereupon, signature not having been</p> <p>22 waived, the deposition concluded at 5:50 p.m.)</p> |
| <p style="text-align: right;">390</p> <p>1 meta-analysis.</p> <p>2 MR. WEISS: Okay. I have no further</p> <p>3 questions, thank you very much.</p> <p>4 EXAMINATION</p> <p>5 BY MR. SAHAM:</p> <p>6 Q. Dr. Dieppe, just a couple more</p> <p>7 questions -- Dr. Juni.</p> <p>8 Is it accurate that the bottom</p> <p>9 portion of Figure 1 of your British Medical</p> <p>10 Journal article, that that information regarding</p> <p>11 the lower complicated ulcer event rate for</p> <p>12 diclofenac under the FDA alternative definition,</p> <p>13 that that information was not disclosed in the</p> <p>14 JAMA article we've been discussing today?</p> <p>15 A. This is correct, yes.</p> <p>16 Q. And is it also accurate that the</p> <p>17 JAMA article did not disclose that the -- that --</p> <p>18 strike that.</p> <p>19 Is it also accurate that the JAMA</p> <p>20 article did not disclose that Celebrex failed to</p> <p>21 demonstrate a significantly different</p> <p>22 complicated -- or strike that question -- is it</p>                                                                                        | <p style="text-align: right;">392</p> <p>1 ACKNOWLEDGEMENT OF DEPONENT</p> <p>2 I, PETER JUNI, M.D., do hereby acknowledge I have</p> <p>3 read and examined the foregoing pages of</p> <p>4 testimony, and the same is a true, correct and</p> <p>5 complete testimony given by me, and any changes</p> <p>6 or corrections, if any, appear in the attached</p> <p>7 errata sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 Peter Juni, M.D.      Date</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

Peter Juni

September 21, 2010

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| <p style="text-align: right;">393</p> <p>1 CERTIFICATE OF COURT REPORTER<br/> 2 UNITED STATES OF AMERICA )<br/> 3 DISTRICT OF COLUMBIA )<br/> 4 I, LORI G. MACKENZIE, the reporter before<br/> 5 whom the foregoing deposition was taken, do<br/> 6 hereby certify that the witness whose testimony<br/> 7 appears in the foregoing deposition was sworn by<br/> 8 me; that the testimony of said witness was taken<br/> 9 by me in machine shorthand and thereafter<br/> 10 transcribed by computer-aided transcription; that<br/> 11 said deposition is a true record of the testimony<br/> 12 given by said witness; that I am neither counsel<br/> 13 for, related to, nor employed by any of the<br/> 14 parties to the action in which this deposition<br/> 15 was taken; and, further, that I am not a relative<br/> 16 or employee of any attorney or counsel employed<br/> 17 by the parties hereto, or financially or<br/> 18 otherwise interested in the outcome of this<br/> 19 action.<br/> 20 _____<br/> 21 LORI G. MACKENZIE<br/> 22 Notary Public in and for the<br/> District of Columbia<br/> My Commission expires April 14, 2011</p>                                                                                                                                                                                    | <p style="text-align: right;">395</p> <p>1 DEPOSITION ERRATA SHEET<br/> 2<br/> 3 Our Assignment No. 172652<br/> 4 Case Caption: Alaska Electrical Pension Fund<br/> 5 vs. Pharmacia Corp., et al.<br/> 6<br/> 7 DECLARATION UNDER PENALTY OF PERJURY<br/> 8 I declare under penalty of perjury<br/> 9 that I have read the entire transcript of<br/> 10 my Deposition taken in the captioned matter<br/> 11 or the same has been read to me, and<br/> 12 the same is true and accurate, save and<br/> 13 except for changes and/or corrections, if<br/> 14 any, as indicated by me on the DEPOSITION<br/> 15 ERRATA SHEET hereof, with the understanding<br/> 16 that I offer these changes as if still under<br/> 17 oath.<br/> 18 Signed on the _____ day of<br/> 19 _____, 20____.<br/> 20 _____<br/> 21 Peter Juni, M.D.<br/> 22</p> |
| <p style="text-align: right;">394</p> <p>1 September 27, 2010<br/> 2 PETER JUNI, M.D.<br/> c/o ROBBINS, GELLER, RUDMAN &amp; DOWD, LLP<br/> 3 SCOTT H. SAHAM, ESQUIRE<br/> 655 West Broadway<br/> 4 Suite 1900<br/> San Diego, California 92101<br/> 5<br/> 6 Re: ALASKA ELECTRICAL PENSION FUND V. PHARMACIA<br/> Witness: PETER JUNI, M.D.<br/> 7 Date taken: September 21, 2010<br/> 8 Dear Dr. Juni,<br/> 9 We enclose for your review and signature a copy<br/> of the above-referenced transcript. We ask that<br/> 10 you read the transcript carefully. If it is<br/> necessary to make any corrections, please do so<br/> 11 on the enclosed errata sheet, indicating the<br/> page, line number, correction, and reason for<br/> 12 such correction. The errata sheet must be signed<br/> and dated. Also, you must sign the certificate<br/> 13 of deponent enclosed in the transcript.<br/> 14 If you do not complete the reading and signing<br/> within 30 days, you will be deemed to have waived<br/> 15 your right to make corrections. Please return<br/> the certificate of deponent and errata sheet to<br/> 16 Esquire Deposition Solutions, 1020 19th Street,<br/> N.W., Suite 620, Washington, D.C., 20036.<br/> 17<br/> 18 Very truly yours,<br/> 19 _____<br/> 20 Esquire Deposition Solutions<br/> 21<br/> 22</p> | <p style="text-align: right;">396</p> <p>1 DEPOSITION ERRATA SHEET<br/> 2 Page No.____Line No.____Change to:_____<br/> 3 _____<br/> 4 Reason for Change:_____<br/> 5 Page No.____Line No.____Change to:_____<br/> 6 _____<br/> 7 Reason for Change:_____<br/> 8 Page No.____Line No.____Change to:_____<br/> 9 _____<br/> 10 Reason for Change:_____<br/> 11 Page No.____Line No.____Change to:_____<br/> 12 _____<br/> 13 Reason for Change:_____<br/> 14 Page No.____Line No.____Change to:_____<br/> 15 _____<br/> 16 Reason for Change:_____<br/> 17 Page No.____Line No.____Change to:_____<br/> 18 _____<br/> 19 Reason for Change:_____<br/> 20 _____<br/> 21 SIGNATURE:_____DATE:_____<br/> 22 Peter Juni, M.D.</p>                                                                                                              |

Peter Juni

September 21, 2010

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| <p style="text-align: right;">397</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No.____Line No.____Change to:_____</p> <p>3 _____</p> <p>4 Reason for Change:_____</p> <p>5 Page No.____Line No.____Change to:_____</p> <p>6 _____</p> <p>7 Reason for Change:_____</p> <p>8 Page No.____Line No.____Change to:_____</p> <p>9 _____</p> <p>10 Reason for Change:_____</p> <p>11 Page No.____Line No.____Change to:_____</p> <p>12 _____</p> <p>13 Reason for Change:_____</p> <p>14 Page No.____Line No.____Change to:_____</p> <p>15 _____</p> <p>16 Reason for Change:_____</p> <p>17 Page No.____Line No.____Change to:_____</p> <p>18 _____</p> <p>19 Reason for Change:_____</p> <p>20 _____</p> <p>21 SIGNATURE:_____DATE:_____</p> <p>22 Peter Juni, M.D.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |

## EXHIBIT 2



1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEW JERSEY

4 ALASKA ELECTRICAL PENSION FUND, et al.,  
5 Plaintiffs,  
6 -against-  
7 PHARMACIA CORPORATION, et al.,  
8 Defendants.  
9 Civil No. 03-1519 (AET)

10  
11 September 22, 2010  
12 9:24 a.m.

13  
14  
15 DEPOSITION of ETHAN WEINER,  
16 taken by Plaintiffs, pursuant to Notice,  
17 held at the offices of CADWALADER,  
18 WICKERSHAM & TAFT LLP, One World Financial  
19 Center, New York, New York before Wayne  
20 Hock, a Notary Public of the State of New  
21 York.

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| <p>1<br/>2 A P P E A R A N C E S:<br/>3<br/>4 ROBBINS GELLER RUDMAN &amp; DOWD LLP<br/>Attorneys for Plaintiffs<br/>655 West Broadway<br/>San Diego, California 92101<br/>(619) 231-1058<br/>6<br/>7 BY: SCOTT H. SAHAM, ESQ.<br/>ssaham@rgrdlaw.com<br/>8<br/>9 MOTLEY RICE LLC<br/>Attorneys for Plaintiffs<br/>28 Bridgeside Boulevard<br/>Mt. Pleasant,<br/>South Carolina 29464<br/>11 BY: JOSHUA C. LITTLEJOHN, ESQ.<br/>jlittlejohn@motleyrice.com<br/>12<br/>13<br/>14<br/>15 SCOTT &amp; SCOTT LLC<br/>Attorneys for Plaintiffs<br/>600 B Street<br/>San Diego, California 92101<br/>17 BY: MATTHEW MONTGOMERY, ESQ.<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>1<br/>2 A P P E A R A N C E S: (Continued)<br/>3<br/>4 CADWALADER, WICKERSHAM &amp; TAFT LLP<br/>Attorneys for Defendants<br/>One World Financial Center<br/>New York, New York 10281<br/>6<br/>7 BY: JOSHUA R. WEISS, ESQ.<br/>joshua.weiss@cwt.com<br/>8<br/>9 ALSO PRESENT:<br/>ADAM DICOLA, Videographer<br/>* * *<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Page 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1<br/>2 THE VIDEOGRAPHER: Good morning. 09:25:52<br/>3 We are now on the record. The time is 09:25:57<br/>4 9:24 a.m. on September 22, 2010. 09:26:02<br/>5 My name is Adam DiCola here with 09:26:04<br/>6 the court reporter, Wayne Hock, of 09:26:11<br/>7 Veritext National Deposition and 09:26:13<br/>8 Litigation Services. 09:26:16<br/>9 This deposition is being held at 09:26:17<br/>10 the office of Cadwalader Wickersham 09:26:20<br/>11 and Taft, LLP, located at One World 09:26:22<br/>12 Financial Center in New York, New 09:26:26<br/>13 York. 09:26:27<br/>14 The caption of this case is 09:26:27<br/>15 Alaska Electrical Pension Fund, et 09:26:30<br/>16 al., versus Pharmacia Corporation, et 09:26:34<br/>17 al., in the United States District 09:26:37<br/>18 Court, the District of New Jersey, 09:26:37<br/>19 civil action number 03-1519. 09:26:39<br/>20 This is the videotaped 09:26:43<br/>21 deposition of Dr. Ethan Weiner. 09:26:46<br/>22 Please note that the audio and 09:26:48<br/>23 video recording will take place unless 09:26:51<br/>24 all parties agree to go off the 09:26:54<br/>25 record. Microphones are sensitive and 09:26:56</p> | <p>1<br/>2 may pick up any whispers or any 09:26:58<br/>3 private conversations. 09:26:59<br/>4 At this time will counsel and 09:26:59<br/>5 all present please identify themselves 09:27:01<br/>6 for the record. 09:27:03<br/>7 MR. SAHAM: Scott Saham for the 09:27:04<br/>8 plaintiffs. 09:27:06<br/>9 MR. MONTGOMERY: Matt Montgomery 09:27:07<br/>10 for the plaintiffs. 09:27:08<br/>11 MR. LITTLEJOHN: Josh Littlejohn 09:27:10<br/>12 for the plaintiffs. 09:27:11<br/>13 MR. WEISS: Josh Weiss for the 09:27:11<br/>14 defendants and the witness. 09:27:13<br/>15 THE VIDEOGRAPHER: Thank you. 09:27:18<br/>16 The witness will now be sworn in 09:27:19<br/>17 and then we can proceed. 09:27:21<br/>18 E T H A N W E I N E R, having 09:27:22<br/>19 been first duly sworn by a Notary Public 09:27:22<br/>20 of the State of New York, upon being 09:27:22<br/>21 examined, testified as follows: 09:27:23<br/>22 EXAMINATION BY 09:27:23<br/>23 MR. SAHAM: 09:27:24<br/>24 Q. Good morning, Dr. Weiner. 09:27:24<br/>25 A. Good morning. 09:27:34</p> |
| Page 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|        |                                            |          |
|--------|--------------------------------------------|----------|
| 1      | E. Weiner                                  |          |
| 2      | Q. What is your educational                | 09:27:35 |
| 3      | background?                                | 09:27:37 |
| 4      | A. I got my M.D. from Johns                | 09:27:37 |
| 5      | Hopkins, did a residency in internal       | 09:27:42 |
| 6      | medicine at Montefiore Hospital in New     | 09:27:45 |
| 7      | York, and a rheumatology fellowship at the | 09:27:47 |
| 8      | University of Connecticut.                 | 09:27:51 |
| 9      | Q. When did you get your M.D.?             | 09:27:52 |
| 10     | A. 1980.                                   | 09:27:54 |
| 11     | Q. And then you did a rheumatology         | 09:27:55 |
| 12     | fellowship after your residency?           | 09:27:58 |
| 13     | A. Yes.                                    | 09:28:00 |
| 14     | Q. When did you start working for          | 09:28:00 |
| 15     | Pfizer?                                    | 09:28:02 |
| 16     | A. 1989.                                   | 09:28:02 |
| 17     | Q. And you've worked there                 | 09:28:03 |
| 18     | continuously since then?                   | 09:28:05 |
| 19     | A. Up until May of 2009.                   | 09:28:05 |
| 20     | Q. Did you recently retire?                | 09:28:09 |
| 21     | A. Yes.                                    | 09:28:11 |
| 22     | Q. So you're currently retired?            | 09:28:11 |
| 23     | A. Yes.                                    | 09:28:13 |
| 24     | Q. And in 2009 when you retired,           | 09:28:13 |
| 25     | what was your position?                    | 09:28:18 |
| Page 6 |                                            |          |
| 1      | E. Weiner                                  |          |
| 2      | A. I was senior vice president in          | 09:28:19 |
| 3      | the development organization.              | 09:28:23 |
| 4      | Q. And what were your                      | 09:28:24 |
| 5      | responsibilities?                          | 09:28:26 |
| 6      | A. They were a mix of things at            | 09:28:27 |
| 7      | that time that included development of     | 09:28:30 |
| 8      | antiinflammatory drugs and responsibility  | 09:28:31 |
| 9      | for all the drugs developed in Japan for   | 09:28:35 |
| 10     | Pfizer and a couple of special projects.   | 09:28:40 |
| 11     | Q. And bringing you back to the            | 09:28:44 |
| 12     | 2000/2001 time frame, what was your        | 09:28:48 |
| 13     | position then?                             | 09:28:51 |
| 14     | A. I was head of the inflammation          | 09:28:51 |
| 15     | therapeutic area.                          | 09:28:57 |
| 16     | Originally, before the Warner              | 09:28:59 |
| 17     | Lambert acquisition, which I believe was   | 09:29:02 |
| 18     | in the middle of 2000, that was for the    | 09:29:06 |
| 19     | United States and after that that was      | 09:29:09 |
| 20     | pretty much worldwide.                     | 09:29:11 |
| 21     | Q. Okay.                                   | 09:29:13 |
| 22     | What was your title at that                | 09:29:13 |
| 23     | point in time, if you can recall?          | 09:29:16 |
| 24     | A. Probably either executive               | 09:29:17 |
| 25     | director or vice president.                | 09:29:20 |
| Page 7 |                                            |          |
| 1      | E. Weiner                                  |          |
| 2      | Q. And I should ask you, could you         | 09:29:20 |
| 3      | just state your address for the record.    | 09:29:23 |
| 4      | A. Current?                                | 09:29:25 |
| 5      | Q. Yes, your current address.              | 09:29:27 |
| 6      | A. 20 Chapman Drive, East Lyme,            | 09:29:29 |
| 7      | Connecticut.                               | 09:29:32 |
| 8      | Q. And is there any reason today,          | 09:29:33 |
| 9      | medical or otherwise, why you can't        | 09:29:33 |
| 10     | provide truthful and accurate testimony?   | 09:29:35 |
| 11     | A. No.                                     | 09:29:35 |
| 12     | Q. So moving back to that 2000/2001        | 09:29:36 |
| 13     | time frame, who did you report to?         | 09:29:41 |
| 14     | A. Steve Ryder.                            | 09:29:42 |
| 15     | Q. And what was his job?                   | 09:29:44 |
| 16     | A. He was responsible prior to the         | 09:29:45 |
| 17     | merger for all development and regulatory  | 09:29:49 |
| 18     | activities in the U.S.; after the merger   | 09:29:52 |
| 19     | for all development activities worldwide   | 09:29:56 |
| 20     | after early development, after proof of    | 09:30:00 |
| 21     | concept.                                   | 09:30:02 |
| 22     | Q. And do you recall what his title        | 09:30:04 |
| 23     | was?                                       | 09:30:05 |
| 24     | A. He at that point would have been        | 09:30:06 |
| 25     | -- might be senior vice president.         | 09:30:11 |
| Page 8 |                                            |          |
| 1      | E. Weiner                                  |          |
| 2      | Q. And who did you report to?              | 09:30:12 |
| 3      | A. Either depending again on the           | 09:30:13 |
| 4      | time frame Craig Saxton or John Lamattina. | 09:30:16 |
| 5      | Q. And Craig Saxton was in charge          | 09:30:20 |
| 6      | of developed at Pfizer?                    | 09:30:23 |
| 7      | A. At the time, yes.                       | 09:30:25 |
| 8      | Q. And who did Mr. Saxton or Dr.           | 09:30:26 |
| 9      | Saxton report to?                          | 09:30:29 |
| 10     | A. He reported to the head of              | 09:30:30 |
| 11     | research and development who, prior to the | 09:30:32 |
| 12     | merger, was George Milne and post merger   | 09:30:38 |
| 13     | would have been Peter Corr.                | 09:30:43 |
| 14     | Q. During that 2002/2001 time              | 09:30:45 |
| 15     | frame, did you have some responsibilities  | 09:30:47 |
| 16     | with respect to Celebrex?                  | 09:30:51 |
| 17     | A. Yes, I had responsibilities for         | 09:30:52 |
| 18     | the Pfizer side of the alliance with       | 09:30:53 |
| 19     | Searle and Pharmacia.                      | 09:30:57 |
| 20     | Q. And you're referring to the             | 09:31:00 |
| 21     | COX-2 alliance?                            | 09:31:02 |
| 22     | A. Yes.                                    | 09:31:03 |
| 23     | Q. And who reported to you in your         | 09:31:03 |
| 24     | capacity as supervising the Celebrex       | 09:31:07 |
| 25     | activities?                                | 09:31:08 |
| Page 9 |                                            |          |

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| <p>1 E. Weiner</p> <p>2 A. At various times Leland Loose, 09:31:09</p> <p>3 Mark Fletcher, people reported into Leland 09:31:13</p> <p>4 one of which was Sam Zwillich. Mona 09:31:16</p> <p>5 Wahba. 09:31:21</p> <p>6 Q. Mona Wahba as well? 09:31:21</p> <p>7 A. Reported to Leland, yes. 09:31:24</p> <p>8 Q. Who then reported up to you? 09:31:26</p> <p>9 A. Yes. 09:31:28</p> <p>10 Q. And did you also serve on what 09:31:28</p> <p>11 was called the COX-2 operations committee? 09:31:30</p> <p>12 A. Yes. 09:31:32</p> <p>13 Q. And what was that? 09:31:33</p> <p>14 A. There was a series of 09:31:33</p> <p>15 committees. That one was responsible for 09:31:36</p> <p>16 both the development committee and the 09:31:41</p> <p>17 commercialization committee or whatever it 09:31:43</p> <p>18 was called. It was sort of an 09:31:45</p> <p>19 intermediate committee where most of the 09:31:48</p> <p>20 decisions were made and only the most 09:31:51</p> <p>21 important decisions got passed up to the 09:31:54</p> <p>22 executive committee that was on top of 09:31:58</p> <p>23 that one. 09:32:00</p> <p>24 Q. Did you meet on a monthly basis? 09:32:00</p> <p>25 A. I think it was either monthly or 09:32:02</p> <p style="text-align: right;">Page 10</p> | <p>1 E. Weiner</p> <p>2 every three months or something in 09:32:05</p> <p>3 between. 09:32:06</p> <p>4 Q. And do you recall who else sat 09:32:07</p> <p>5 on that committee? 09:32:09</p> <p>6 A. A lot of people came and went. 09:32:10</p> <p>7 So if you name someone, I probably could 09:32:15</p> <p>8 tell you whether they were on it. 09:32:24</p> <p>9 Q. In a few minutes we can look at 09:32:24</p> <p>10 a document that I think will refresh your 09:32:24</p> <p>11 recollection on that. 09:32:24</p> <p>12 Do you recall having in the 2000 09:32:24</p> <p>13 or in the I'll say the 1998 to 2001 time 09:32:26</p> <p>14 frame having any interactions with Fred 09:32:30</p> <p>15 Hassan? 09:32:34</p> <p>16 A. No, no direct ones, no. 09:32:35</p> <p>17 Q. Have you ever met Dr. Hassan? 09:32:37</p> <p>18 A. I believe I did at one meeting, 09:32:39</p> <p>19 you know, that we were in the CEO's 09:32:43</p> <p>20 office. It was a fairly large meeting. I 09:32:47</p> <p>21 was just one of the people in the 09:32:50</p> <p>22 audience. 09:32:52</p> <p>23 Q. What about a woman by the name 09:32:52</p> <p>24 of Carrie Cox, did you ever interact with 09:32:54</p> <p>25 her? 09:32:57</p> <p style="text-align: right;">Page 11</p>                                                                                 |
| <p>1 E. Weiner</p> <p>2 A. I met her once or twice. We 09:32:57</p> <p>3 really didn't have any meaningful 09:32:57</p> <p>4 interaction. 09:32:58</p> <p>5 Q. What about Steven Geis? 09:32:58</p> <p>6 A. Yes, I worked with Steve Geis. 09:33:00</p> <p>7 Q. Was he on the operations 09:33:03</p> <p>8 committee? 09:33:05</p> <p>9 A. Yes. 09:33:05</p> <p>10 Q. So you interacted with him at 09:33:05</p> <p>11 least on a monthly basis? 09:33:08</p> <p>12 A. (No verbal response). 09:33:09</p> <p>13 Q. You have to answer verbally. 09:33:11</p> <p>14 A. Sorry. Yes, I did. 09:33:12</p> <p>15 Q. I want to show you what has been 09:33:15</p> <p>16 previously marked in this litigation as 09:33:21</p> <p>17 Plaintiff's Exhibit 77. 09:33:22</p> <p>18 Could you please take a look at 09:33:38</p> <p>19 Plaintiff's Exhibit 77. And I'd ask you 09:33:41</p> <p>20 if you recognize this document. 09:33:42</p> <p>21 A. Yeah, this is the CLASS 09:33:43</p> <p>22 protocol. 09:33:46</p> <p>23 Q. And what's the CLASS protocol? 09:33:47</p> <p>24 A. This embodies the design and 09:33:52</p> <p>25 high level analysis plan for the large 09:33:56</p> <p style="text-align: right;">Page 12</p>                                                                    | <p>1 E. Weiner</p> <p>2 outcomes trial that Pharmacia conducted 09:33:58</p> <p>3 along with Pfizer comparing Celebrex to 09:34:03</p> <p>4 NSAIDs for GI outcomes. 09:34:07</p> <p>5 Q. Was this document required by 09:34:09</p> <p>6 the FDA for setting up a clinical trial of 09:34:14</p> <p>7 this type? 09:34:19</p> <p>8 A. Well, a protocol's required for 09:34:19</p> <p>9 any preclinical trial, so yes. 09:34:22</p> <p>10 Q. Would you have participated in 09:34:25</p> <p>11 reviewing this document before it was 09:34:30</p> <p>12 ultimately submitted to the Food and Drug 09:34:33</p> <p>13 Administration? 09:34:36</p> <p>14 A. Yes. 09:34:36</p> <p>15 Q. And I'd like to turn your 09:34:38</p> <p>16 attention to page ten of thirty-six of 09:34:39</p> <p>17 Exhibit 77, of the revised clinical 09:34:48</p> <p>18 protocol and heading 2.1, primary 09:34:52</p> <p>19 objectives. The document states "the 09:34:57</p> <p>20 primary objective of this study is to 09:35:03</p> <p>21 compare the instance of clinically 09:35:07</p> <p>22 significant upper gastrointestinal adverse 09:35:09</p> <p>23 events, a composite safety endpoint 09:35:15</p> <p>24 comprised of perforation, bleeding, or 09:35:18</p> <p>25 gastric outlet obstruction associated with 09:35:21</p> <p style="text-align: right;">Page 13</p> |

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| <p>1 E. Weiner<br/>2 SC58635400 mg BID to that associated with 09:35:23<br/>3 diclofenac seventy-five mg BID in patients 09:35:32<br/>4 with OA or RA." 09:35:36<br/>5 Does that meet with your 09:35:37<br/>6 recollection that the primary objective of 09:35:39<br/>7 the CLASS trial was to test for 09:35:41<br/>8 complicated ulcers or CSUGIEs? 09:35:45<br/>9 A. Yes. 09:35:49<br/>10 Q. And just for the purposes of 09:35:49<br/>11 today's deposition, are you comfortable 09:35:51<br/>12 with referring to CSUGIEs or POBs as 09:35:52<br/>13 complicated ulcers? 09:36:00<br/>14 A. Sure. 09:36:01<br/>15 Q. That's a fair characterization 09:36:01<br/>16 of what they are? 09:36:03<br/>17 A. Yes. 09:36:04<br/>18 Q. And what, in your understanding, 09:36:04<br/>19 was a complicated ulcer? 09:36:06<br/>20 A. A complicated ulcer was one that 09:36:07<br/>21 had a medical complication, such as 09:36:09<br/>22 bleeding, perforation, gastric outlet 09:36:12<br/>23 obstruction. 09:36:16<br/>24 Q. And the CLASS trial was powered 09:36:17<br/>25 and designed to test for that outcome? 09:36:20</p> <p style="text-align: right;">Page 14</p>                                                                                                                                            | <p>1 E. Weiner<br/>2 A. Yes. Technically two protocols, 09:36:26<br/>3 but yes, that's correct. 09:36:29<br/>4 Q. And this document, just to be 09:36:29<br/>5 clear, there were two protocols; is that 09:36:31<br/>6 correct? 09:36:33<br/>7 A. Yes. 09:36:33<br/>8 Q. And there were two comparisons 09:36:34<br/>9 being conducted as part of the CLASS 09:36:36<br/>10 trial; is that correct? 09:36:38<br/>11 MR. WEISS: I object to the form 09:36:39<br/>12 of the question. 09:36:39<br/>13 Q. And again, you have to answer 09:36:40<br/>14 verbally. 09:36:43<br/>15 A. The major comparison was to the 09:36:43<br/>16 pooled -- pooling of the NSAIDs, that was 09:36:45<br/>17 what was agreed with the FDA. 09:36:48<br/>18 Q. But there were two arms of the 09:36:49<br/>19 trial, one was being a comparison between 09:36:51<br/>20 Celebrex and diclofenac; is that correct? 09:36:57<br/>21 A. Well, again, the trial was 09:36:58<br/>22 designed to compare Celebrex to the two 09:37:02<br/>23 NSAIDs collectively. That's how it was 09:37:06<br/>24 designed. 09:37:09<br/>25 Q. All I'm trying to establish, 09:37:10</p> <p style="text-align: right;">Page 15</p>                                          |
| <p>1 E. Weiner<br/>2 there's two protocols, one setting out the 09:37:12<br/>3 comparison between Celebrex and diclofenac 09:37:15<br/>4 and then a second protocol setting out the 09:37:18<br/>5 comparison between Celebrex and ibuprofen; 09:37:22<br/>6 is that correct? 09:37:25<br/>7 A. I would just refine that to say 09:37:26<br/>8 that one set out the instructions for 09:37:27<br/>9 conducting the part where patients either 09:37:29<br/>10 got Celebrex or diclofenac and the other 09:37:34<br/>11 where patients got either Celebrex or 09:37:36<br/>12 ibuprofen. 09:37:40<br/>13 Q. And this particular protocol 09:37:41<br/>14 that's been marked as Exhibit 77 that's 09:37:42<br/>15 sitting in front of you, this is the 09:37:45<br/>16 protocol that deals with the comparisons 09:37:46<br/>17 between Celebrex and diclofenac; is that 09:37:49<br/>18 correct? 09:37:51<br/>19 A. Yes. 09:37:51<br/>20 Q. And I'd like to turn your 09:37:52<br/>21 attention to page twenty of thirty-six of 09:37:58<br/>22 Exhibit 77, 4.3, treatment period. And 09:38:01<br/>23 per the protocol, the treatment period is 09:38:13<br/>24 defined as the fifty-two-week interval 09:38:15<br/>25 during which study medication is taken or 09:38:19</p> <p style="text-align: right;">Page 16</p> | <p>1 E. Weiner<br/>2 until the trial officially concludes, 09:38:19<br/>3 whichever occurs first; is that correct, 09:38:22<br/>4 sir? 09:38:24<br/>5 A. Yes. 09:38:25<br/>6 Q. And does that meet with your 09:38:25<br/>7 recollection of what the treatment period 09:38:26<br/>8 was defined in the protocol? 09:38:29<br/>9 A. Yes. 09:38:31<br/>10 Q. I'd like to turn your attention 09:38:34<br/>11 to page thirty of thirty-six of 09:38:39<br/>12 Exhibit 77. The top paragraph sets out, 09:38:46<br/>13 "a stepwise procedure will be used to 09:38:56<br/>14 strongly control the type one error." 09:38:59<br/>15 Do you see that? 09:39:02<br/>16 A. Yes. 09:39:03<br/>17 Q. And what's type one error? 09:39:04<br/>18 A. Type one error is where one -- 09:39:06<br/>19 where one finds statistical significance 09:39:11<br/>20 where it doesn't exist or conversely 09:39:15<br/>21 actually -- there are two types. You can 09:39:18<br/>22 find -- I always forget which type goes 09:39:20<br/>23 with which. But in one case you can 09:39:23<br/>24 wrongly conclude that there's an effect or 09:39:27<br/>25 you can wrongly conclude that there's not 09:39:30</p> <p style="text-align: right;">Page 17</p> |



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| <p>1 E. Weiner<br/>2 an effect and this was a procedure to 09:39:32<br/>3 correct for multiple comparisons. 09:39:34<br/>4 Q. And is one point of setting out 09:39:35<br/>5 in a protocol before you conduct the study 09:39:38<br/>6 how the comparison is to be conducted is 09:39:41<br/>7 that to hopefully prevent type one error 09:39:44<br/>8 from occurring? 09:39:49<br/>9 MR. WEISS: I object to the form 09:39:50<br/>10 of the question. 09:39:51<br/>11 A. The analysis plan and design are 09:39:51<br/>12 designed really to prevent both type one 09:39:54<br/>13 and type two error so that one does not 09:39:57<br/>14 either wrongly conclude the drug works 09:40:00<br/>15 when it doesn't or wrongly conclude that 09:40:04<br/>16 it doesn't work when it really does. 09:40:06<br/>17 Q. And is one way to correct for 09:40:06<br/>18 type one error to pre-specify the outcome 09:40:08<br/>19 prior to the initiation of the trial? 09:40:13<br/>20 MR. WEISS: Objection. 09:40:14<br/>21 A. That's really formulating the 09:40:15<br/>22 hypothesis, so that comes first, you have 09:40:20<br/>23 a hypothesis that drug A has more of an 09:40:23<br/>24 effect than drug B, let's say. And then 09:40:28<br/>25 you design the study to test the 09:40:30</p> <p style="text-align: right;">Page 18</p> | <p>1 E. Weiner<br/>2 hypothesis. And the two errors again you 09:40:32<br/>3 don't want to make are either wrongly 09:40:35<br/>4 concluding the hypothesis is correct or 09:40:38<br/>5 wrongly concluding the hypothesis is 09:40:42<br/>6 incorrect. 09:40:44<br/>7 Q. Was one thing the protocol does 09:40:45<br/>8 is to set forward the appropriate power of 09:40:45<br/>9 the study so that the statistical analysis 09:40:49<br/>10 can be conducted in a way that would avoid 09:40:53<br/>11 type one error? 09:40:57<br/>12 MR. WEISS: I object to the form 09:40:58<br/>13 of the question. 09:40:59<br/>14 A. One uses past data to arrive at 09:41:01<br/>15 the best estimate how many subjects would 09:41:05<br/>16 be required to avoid both types of error, 09:41:09<br/>17 minimize the probability of both types of 09:41:13<br/>18 error depending on how much variability 09:41:16<br/>19 there is in the endpoint and how big an 09:41:19<br/>20 effect one believes the study will show. 09:41:23<br/>21 Q. And reading along in the same 09:41:27<br/>22 paragraph on page thirty of thirty-six of 09:41:30<br/>23 Exhibit 77, the protocol states, "if the 09:41:33<br/>24 test is not significant, the null 09:41:37<br/>25 hypothesis is retained and the procedure 09:41:41</p> <p style="text-align: right;">Page 19</p> |
| <p>1 E. Weiner<br/>2 stops," and that's referring to the 09:41:42<br/>3 comparison with the pooled NSAIDs; is that 09:41:47<br/>4 correct? 09:41:51<br/>5 A. Yes. 09:41:51<br/>6 Q. And what is the null hypothesis? 09:41:51<br/>7 A. That means that there would be 09:41:54<br/>8 no significant difference between 09:41:56<br/>9 celecoxib and pooled NSAIDs. 09:41:58<br/>10 Q. So if there was no statistically 09:42:02<br/>11 significant difference for complicated 09:42:06<br/>12 ulcers when celecoxib was compared to the 09:42:07<br/>13 pooled NSAIDs, the null hypothesis would 09:42:12<br/>14 be retained; is that correct? 09:42:14<br/>15 A. That's correct. 09:42:16<br/>16 Q. And is that, in fact, what 09:42:16<br/>17 happened when the CLASS trial went 09:42:18<br/>18 forward? 09:42:20<br/>19 A. Yes. However, you need to 09:42:20<br/>20 qualify that question because there's a 09:42:24<br/>21 formal statistical approach to the primary 09:42:26<br/>22 endpoint that does not preclude many other 09:42:32<br/>23 analyses which, in fact, are discussed in 09:42:35<br/>24 the statistical analysis plan. 09:42:38<br/>25 Q. Is it fair to say, as a result 09:42:39</p> <p style="text-align: right;">Page 20</p>                                                                                   | <p>1 E. Weiner<br/>2 of the CLASS trial, the null hypothesis 09:42:41<br/>3 was retained? 09:42:44<br/>4 A. For the primary endpoint. 09:42:44<br/>5 Clinical data, especially in a large trial 09:42:50<br/>6 like this one, is very nuanced and rich 09:42:53<br/>7 and there are many conclusions to be made 09:42:56<br/>8 in trials that either do or don't even 09:43:00<br/>9 reach their primary endpoint. Trials can 09:43:04<br/>10 reach their primary endpoint but yet not 09:43:08<br/>11 have many other attributes looked at 09:43:12<br/>12 secondarily and conversely trials can fail 09:43:12<br/>13 their primary endpoint but still provide a 09:43:17<br/>14 richness of useful data. 09:43:20<br/>15 Q. But that aside, just following 09:43:22<br/>16 the language in the protocol where it 09:43:24<br/>17 states, "if the test is not significant, 09:43:26<br/>18 the null hypothesis is retained and the 09:43:28<br/>19 procedure stops," per that statement in 09:43:31<br/>20 the protocol, after the data was unblinded 09:43:36<br/>21 and analyzed with respect to the pooled 09:43:39<br/>22 NSAIDs, the null hypothesis was retained; 09:43:42<br/>23 is that correct? 09:43:46<br/>24 A. Yes. 09:43:46<br/>25 Q. Dropping down to the next 09:43:47</p> <p style="text-align: right;">Page 21</p>                     |



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| <p>1 E. Weiner</p> <p>2 paragraph in Exhibit 77 on page thirty of 09:43:50</p> <p>3 thirty-six it states that "two endpoints 09:43:54</p> <p>4 will be analyzed." 09:44:00</p> <p>5 Do you see that? 09:44:02</p> <p>6 A. Yes. 09:44:03</p> <p>7 Q. And does that meet with your 09:44:05</p> <p>8 recollection that per the protocol two 09:44:05</p> <p>9 endpoints would be analyzed, one being the 09:44:06</p> <p>10 traditional definition of complicated 09:44:07</p> <p>11 ulcer and the second being the FDA 09:44:10</p> <p>12 alternative definition of complicated 09:44:12</p> <p>13 ulcer? 09:44:16</p> <p>14 A. Yes. 09:44:16</p> <p>15 Q. And then dropping down to the 09:44:16</p> <p>16 bottom of page thirty it states, 09:44:19</p> <p>17 "symptomatic UGI ulcers documented by 09:44:24</p> <p>18 endoscopy or UGI barium x-ray with no 09:44:24</p> <p>19 evidence of perforation, bleeding, or 09:44:29</p> <p>20 obstruction will be categorized and 09:44:32</p> <p>21 summarized separately." 09:44:35</p> <p>22 Do you see that? 09:44:36</p> <p>23 A. Yes. 09:44:38</p> <p>24 Q. And is a symptomatic ulcer, did 09:44:38</p> <p>25 you refer to those as PUBs or GDUs? 09:44:43</p> <p style="text-align: right;">Page 22</p>                                                                                                                    | <p>1 E. Weiner</p> <p>2 A. PUBs, yes. I guess you could 09:44:51</p> <p>3 also refer to them as GDUs. 09:44:58</p> <p>4 Q. And for the purposes of today's 09:44:58</p> <p>5 deposition, are you comfortable with 09:44:58</p> <p>6 referring to those as symptomatic ulcers? 09:44:58</p> <p>7 A. Sure. 09:44:58</p> <p>8 Q. And is it accurate that an 09:44:58</p> <p>9 endpoint which included both complicated 09:44:59</p> <p>10 ulcers and symptomatic ulcers together was 09:45:02</p> <p>11 not a prespecified endpoint for this 09:45:06</p> <p>12 protocol? 09:45:10</p> <p>13 A. It was not the primary endpoint, 09:45:10</p> <p>14 but it was prespecified that symptomatic 09:45:12</p> <p>15 ulcers would be looked at, would be 09:45:17</p> <p>16 categorized. 09:45:20</p> <p>17 Q. They'd be categorized where with 09:45:21</p> <p>18 respect to the two endpoints specified 09:45:24</p> <p>19 above, those were to be analyzed; is that 09:45:27</p> <p>20 correct? 09:45:29</p> <p>21 A. Well, I think the intent was to 09:45:29</p> <p>22 analyze these ulcers as well. 09:45:31</p> <p>23 Q. But the protocol just says they 09:45:34</p> <p>24 would be categorized and summarized; is 09:45:36</p> <p>25 that correct? 09:45:39</p> <p style="text-align: right;">Page 23</p>                                                                               |
| <p>1 E. Weiner</p> <p>2 A. The protocol is somewhat vague 09:45:39</p> <p>3 on that point, but anything that's not the 09:45:42</p> <p>4 primary analysis can still be looked at 09:45:44</p> <p>5 statistically. 09:45:49</p> <p>6 Q. Whether or not it could be 09:45:49</p> <p>7 looked at statistically, it's not a 09:45:52</p> <p>8 prespecified endpoint per the protocol and 09:45:55</p> <p>9 analysis of combined complicated ulcers 09:45:59</p> <p>10 and symptomatic ulcers; is that correct? 09:46:01</p> <p>11 MR. WEISS: I object to the form 09:46:04</p> <p>12 of the question. 09:46:05</p> <p>13 A. Well, there are many endpoints 09:46:05</p> <p>14 in the protocol. The fact that it's in 09:46:08</p> <p>15 here in a sense makes it prespecified. 09:46:10</p> <p>16 It's not the primary analysis to be done. 09:46:13</p> <p>17 Q. But they're referencing 09:46:16</p> <p>18 categorizing the symptomatic ulcers by 09:46:17</p> <p>19 themselves, not analyzing them along with 09:46:21</p> <p>20 the complicated ulcers in a new combined 09:46:23</p> <p>21 group; is that correct? 09:46:27</p> <p>22 MR. WEISS: I object to the form 09:46:27</p> <p>23 of the question. 09:46:29</p> <p>24 A. The latter would be implied 09:46:29</p> <p>25 because analyzing them by themselves is 09:46:31</p> <p style="text-align: right;">Page 24</p> | <p>1 E. Weiner</p> <p>2 not of much medical use. In other words, 09:46:34</p> <p>3 as a physician, giving one of these drugs 09:46:36</p> <p>4 I would be worried about is this patient 09:46:41</p> <p>5 going to have a GI bleed or a CSUGIE. I'd 09:46:43</p> <p>6 also be worried about whether they're 09:46:50</p> <p>7 going to have a symptomatic ulcer or 09:46:53</p> <p>8 worse. In other words, if you said, well, 09:46:56</p> <p>9 the chance of getting an ulcer is X 09:46:56</p> <p>10 percent, that doesn't include something 09:46:56</p> <p>11 worse than an ulcer but that's not 09:46:59</p> <p>12 terribly meaningful to me in trying to 09:47:02</p> <p>13 describe the risk to the patient. It's 09:47:05</p> <p>14 the combination of the two that I'd want 09:47:07</p> <p>15 to be able to keep track of. 09:47:09</p> <p>16 Q. Now, there's nothing in the 09:47:10</p> <p>17 protocol setting out it that there's going 09:47:12</p> <p>18 to be an analysis at six months; is that 09:47:14</p> <p>19 correct? 09:47:16</p> <p>20 A. Yes. 09:47:16</p> <p>21 Q. You're agreeing with me that 09:47:19</p> <p>22 there's nothing in the protocol that 09:47:20</p> <p>23 states that the -- 09:47:22</p> <p>24 MR. SAHAM: Strike that question. 09:47:27</p> <p>25 Q. The protocol does not set out 09:47:29</p> <p style="text-align: right;">Page 25</p> |

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| <p>1 E. Weiner<br/>2 that there's going to be an analysis of 09:47:33<br/>3 data for six months; correct? 09:47:35<br/>4 MR. WEISS: I object to the form 09:47:38<br/>5 of the question. 09:47:38<br/>6 A. The protocol does not set out 09:47:39<br/>7 specific which time points will be 09:47:45<br/>8 analyzed. 09:47:48<br/>9 Q. But it does list the treatment 09:47:48<br/>10 period as fifty-two weeks; correct? 09:47:51<br/>11 A. The maximum possible treatment 09:47:53<br/>12 period, yes. 09:47:55<br/>13 Q. And the protocol does not set 09:47:56<br/>14 out that there's going to be an analysis 09:47:58<br/>15 of patients who were not taking aspirin; 09:48:00<br/>16 is that correct? 09:48:05<br/>17 A. I don't see it here. I don't 09:48:05<br/>18 recall. 09:48:19<br/>19 (Whereupon, an e-mail dated 09:48:21<br/>20 April 17, 2000 was marked Plaintiff's 09:48:21<br/>21 Exhibit 162 for identification.) 09:48:22<br/>22 Q. I want to show you what I'm 09:48:22<br/>23 marking as Plaintiff's Exhibit 162. 09:48:23<br/>24 Mr. Weiner, please take a look 09:49:27<br/>25 at what I've marked as Plaintiff's 09:49:30</p> <p style="text-align: right;">Page 26</p>              | <p>1 E. Weiner<br/>2 Exhibit 162. 09:49:32<br/>3 MR. SAHAM: And for the record, 09:49:33<br/>4 Plaintiff's Exhibit 162 bears Bates 09:49:35<br/>5 numbers DEFS 00170973 through 976. 09:49:35<br/>6 And it's an e-mail attaching a Searle 09:49:44<br/>7 Pfizer operations committee April 6, 09:49:50<br/>8 2000 videoconference minutes. And the 09:49:52<br/>9 top e-mail or actually the second 09:50:10<br/>10 e-mail in the chain is from Maritza 09:50:12<br/>11 Moncayo, M O N C A Y O, to Ethan 09:50:15<br/>12 Weiner, Gary Jortner, George Geis, Guy 09:50:21<br/>13 Buckland, Joe Feczko, and some other 09:50:24<br/>14 individuals. 09:50:26<br/>15 Q. Do you recognize this document? 09:50:29<br/>16 A. From ten years ago, no, but I 09:50:30<br/>17 see that it's an e-mail with my name on 09:50:35<br/>18 it. 09:50:37<br/>19 Q. So this is an e-mail you would 09:50:37<br/>20 have received in the ordinary course of 09:50:38<br/>21 your employment at Pfizer on or about 09:50:40<br/>22 April 17, 2000? 09:50:43<br/>23 MR. WEISS: I object to the form 09:50:44<br/>24 of the question. 09:50:45<br/>25 A. That would be likely, yes. 09:50:45</p> <p style="text-align: right;">Page 27</p> |
| <p>1 E. Weiner<br/>2 Q. And it -- the subject of the 09:50:48<br/>3 e-mail is ops comm 400 minutes/500 draft 09:50:54<br/>4 agenda; is that correct? 09:51:00<br/>5 A. Yes. 09:51:04<br/>6 Q. Would you have attended the 09:51:04<br/>7 April, 2000 operations committee meeting 09:51:06<br/>8 videoconference that these minutes are 09:51:10<br/>9 for? 09:51:12<br/>10 A. It's very likely that I would 09:51:13<br/>11 have. 09:51:15<br/>12 Q. And is it also likely that Dr. 09:51:15<br/>13 Jortner, Dr. Geis, and Dr. Feczko would 09:51:18<br/>14 have been there? 09:51:21<br/>15 A. Jortner and Geis I believe were 09:51:22<br/>16 on the ops comm so I would have expected 09:51:26<br/>17 them there. I believe that -- again, this 09:51:29<br/>18 is ten years ago -- Dr. Feczko was on the 09:51:31<br/>19 executive committee, so he may have 09:51:36<br/>20 attended. It would be speculative on my 09:51:38<br/>21 part unless you have an attendance record. 09:51:41<br/>22 Q. Well, he did receive the e-mail 09:51:43<br/>23 as one of the individuals listed there; is 09:51:46<br/>24 that correct? 09:51:48<br/>25 A. Yes. 09:51:48</p> <p style="text-align: right;">Page 28</p> | <p>1 E. Weiner<br/>2 Q. And turning to the second page 09:51:48<br/>3 of this document which is the 09:52:00<br/>4 videoconference minutes from the April 6, 09:52:00<br/>5 2000 Searle/Pfizer operations committee, 09:52:00<br/>6 are you with me? 09:52:01<br/>7 A. Yes. 09:52:02<br/>8 Q. And Roman numeral three is 09:52:02<br/>9 entitled Priority Issues Updates. 09:52:05<br/>10 Do you see that? 09:52:07<br/>11 A. Yes. 09:52:08<br/>12 Q. And under that it says, "T1 09:52:08<br/>13 Celebrex CLASS action," C L A S S action. 09:52:12<br/>14 Do you see that? 09:52:17<br/>15 A. Yes. 09:52:18<br/>16 Q. And under that it says, "summary 09:52:18<br/>17 analysis presented by Geis?" 09:52:21<br/>18 A. Yes. 09:52:22<br/>19 Q. Is it fair to say that on or 09:52:22<br/>20 about April 6 Dr. Geis presented summary 09:52:25<br/>21 analysis of the unblinded CLASS data? 09:52:29<br/>22 MR. WEISS: I object to the form 09:52:32<br/>23 of the question. 09:52:34<br/>24 A. It was -- yes, it was presented 09:52:34<br/>25 at that ops comm. 09:52:37</p> <p style="text-align: right;">Page 29</p>                                                                                               |

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| <p>1 E. Weiner</p> <p>2 Q. And the data was unblinded 09:52:38</p> <p>3 approximately around March 17, 2000; is 09:52:42</p> <p>4 that correct? 09:52:46</p> <p>5 A. As best I can recall. 09:52:46</p> <p>6 Q. And under -- there was a 09:52:48</p> <p>7 presentation and some discussion of the 09:52:50</p> <p>8 data in this meeting? 09:52:51</p> <p>9 A. Yes. 09:52:53</p> <p>10 Q. And you would have attended that 09:52:53</p> <p>11 in the ordinary scope of your employment 09:52:55</p> <p>12 at Pfizer? 09:52:57</p> <p>13 A. Yes. 09:52:57</p> <p>14 MR. WEISS: I object to the form 09:52:57</p> <p>15 of the question. 09:52:58</p> <p>16 A. Yes. 09:52:59</p> <p>17 Q. And under the discussion 09:52:59</p> <p>18 heading, the third bullet point states, 09:53:03</p> <p>19 "Geis and Montwill are reviewing data with 09:53:07</p> <p>20 lead investigator today," paren, "4/6," 09:53:12</p> <p>21 closed paren. 09:53:15</p> <p>22 Who's Montwill? 09:53:16</p> <p>23 A. I honestly do not recall. 09:53:18</p> <p>24 Q. And then under the next heading 09:53:21</p> <p>25 is action items and the first bullet point 09:53:23</p> <p>Page 30</p>                                                       | <p>1 E. Weiner</p> <p>2 says, "Geis to forward the current slide 09:53:25</p> <p>3 set to Jortner. Restricted distribution 09:53:28</p> <p>4 to need-to-know basis only." 09:53:33</p> <p>5 Again, who was Dr. Jortner? 09:53:35</p> <p>6 A. It was Mr. Jortner was one of 09:53:38</p> <p>7 the commercial people at Pfizer. 09:53:42</p> <p>8 Q. And was he an executive vice 09:53:43</p> <p>9 president at this time? 09:53:45</p> <p>10 A. That sounds right. 09:53:45</p> <p>11 Q. And do you know why the 09:53:49</p> <p>12 distribution was to be restricted to 09:53:51</p> <p>13 need-to-know basis only? 09:53:52</p> <p>14 A. I can only speculate. In 09:53:55</p> <p>15 general, when there are immediately just 09:53:58</p> <p>16 breaking results, distribution is usually 09:54:02</p> <p>17 limited for a matter of days until the 09:54:05</p> <p>18 results can be checked, more detail 09:54:11</p> <p>19 analyses done, and things verified and 09:54:14</p> <p>20 then they're more widely distributed. 09:54:19</p> <p>21 Q. Turning to the next page of the 09:54:25</p> <p>22 April 6, 2000 videoconference minutes from 09:54:32</p> <p>23 the operations committee, there's a 09:54:35</p> <p>24 heading towards the bottom that says, "T2 09:54:37</p> <p>25 Celebrex differentiation," paren, 09:54:41</p> <p>Page 31</p> |
| <p>1 E. Weiner</p> <p>2 "Buckland," closed paren. 09:54:44</p> <p>3 Do you know who the Buckland is 09:54:46</p> <p>4 that's being referred to here? 09:54:48</p> <p>5 A. Guy Buckland. 09:54:50</p> <p>6 Q. Who is he? 09:54:52</p> <p>7 A. He was one of the Pfizer 09:54:53</p> <p>8 commercial people, I believe reported to 09:54:54</p> <p>9 Gary Jortner. 09:54:57</p> <p>10 Q. And the bullet point under that 09:54:59</p> <p>11 says, "deferred to next ops comm. Project 09:54:59</p> <p>12 is on track and there is alignment." 09:55:02</p> <p>13 Do you know what that's 09:55:05</p> <p>14 referring to? 09:55:06</p> <p>15 A. I don't recall. I could 09:55:07</p> <p>16 speculate. 09:55:08</p> <p>17 Q. Well, what do you think that's 09:55:11</p> <p>18 referring to? 09:55:13</p> <p>19 A. It probably -- I mean, one of 09:55:13</p> <p>20 the -- in the marketing of any drug, 09:55:17</p> <p>21 things that differentiate that drug from 09:55:20</p> <p>22 others are -- is a key factor and 09:55:22</p> <p>23 marketing people are always coming up with 09:55:25</p> <p>24 programs and plans. It's an ongoing 09:55:32</p> <p>25 discussion item that they have. So I 09:55:34</p> <p>Page 32</p> | <p>1 E. Weiner</p> <p>2 don't recall the details of this specific 09:55:35</p> <p>3 project, but clearly there's one ongoing 09:55:38</p> <p>4 at that time that they were reporting into 09:55:42</p> <p>5 the ops comm. 09:55:44</p> <p>6 Q. Was one of the purposes of doing 09:55:45</p> <p>7 the CLASS trial was to get the safety 09:55:47</p> <p>8 label upgraded for GI for Celebrex? 09:55:50</p> <p>9 A. That was one of the goals. 09:55:53</p> <p>10 Q. And was the ultimate goal of 09:55:54</p> <p>11 trying to get the safety upgrade to 09:55:57</p> <p>12 hopefully be able to sell more Celebrex? 09:56:00</p> <p>13 MR. WEISS: I object to the form 09:56:04</p> <p>14 of the question. 09:56:04</p> <p>15 A. That would be one of the aims. 09:56:05</p> <p>16 Q. And how long were you on the ops 09:56:08</p> <p>17 committee? 09:56:19</p> <p>18 A. Probably until 2003 when it 09:56:19</p> <p>19 ceased to exist when we acquired 09:56:24</p> <p>20 Pharmacia. I believe that was 2003. 09:56:31</p> <p>21 Q. And the purpose of the ops 09:56:33</p> <p>22 committee was to coordinate between Pfizer 09:56:33</p> <p>23 and Searle and Pharmacia, depending on the 09:56:35</p> <p>24 point in time the marketing and 09:56:37</p> <p>25 medical-related issues with respect -- 09:56:46</p> <p>Page 33</p>                   |

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| <p>1 E. Weiner<br/>2 MR. SAHAM: Well, that's a really 09:56:48<br/>3 bad question. 09:56:49<br/>4 Q. The purpose of the operations 09:56:50<br/>5 committee was to coordinate business 09:56:52<br/>6 decisions and medical decisions between 09:56:54<br/>7 the two companies; is that correct? 09:56:55<br/>8 MR. WEISS: I object to the form 09:56:57<br/>9 of the question. 09:56:58<br/>10 A. Yes. 09:56:58<br/>11 Q. And you served in that capacity 09:56:59<br/>12 in -- 09:57:05<br/>13 MR. SAHAM: Strike that. 09:57:06<br/>14 Q. And you served on the operations 09:57:06<br/>15 committee in your capacity as an employee 09:57:08<br/>16 of Pfizer; is that correct? 09:57:11<br/>17 A. That's correct. 09:57:12<br/>18 Q. I want to show you what's 09:57:12<br/>19 previously been marked as Plaintiff's 09:57:15<br/>20 Exhibit 107. Could you please take a look 09:57:26<br/>21 at Plaintiff's Exhibit 107. And 09:57:29<br/>22 specifically this document is entitled 09:57:31<br/>23 COX-2 Alliance. I specifically want to 09:57:33<br/>24 refer you to page six of the document. 09:57:37<br/>25 A. Can I ask you when this was 09:57:40</p> <p style="text-align: right;">Page 34</p> | <p>1 E. Weiner<br/>2 created? 09:57:43<br/>3 Q. You know, unfortunately -- let's 09:57:43<br/>4 see if I can answer your question. I 09:57:48<br/>5 don't think we have the specific date but 09:57:50<br/>6 perhaps from the names of the folks, you 09:57:52<br/>7 know, that will help you put it into time. 09:57:54<br/>8 But I want to turn your attention to page 09:57:58<br/>9 six of the document which is a slide and 09:58:01<br/>10 it's entitled Pfizer/Pharmacia Alliance 09:58:02<br/>11 Organizational Chart. 09:58:13<br/>12 Do you see that? 09:58:13<br/>13 A. Yes. 09:58:13<br/>14 Q. And at the top is the executive 09:58:13<br/>15 management committee? 09:58:13<br/>16 A. Uh-huh. 09:58:13<br/>17 Q. What was the purpose of the 09:58:13<br/>18 executive management committee? 09:58:14<br/>19 A. Technically -- well, two things, 09:58:15<br/>20 really. One was for the operations 09:58:18<br/>21 committee periodically to report its 09:58:20<br/>22 progress and I don't recall how often that 09:58:23<br/>23 was but not frequently, probably twice a 09:58:26<br/>24 year. And secondly if there were issues 09:58:29<br/>25 between companies that cannot be resolved 09:58:35</p> <p style="text-align: right;">Page 35</p> |
| <p>1 E. Weiner<br/>2 at the operations committee, they would be 09:58:38<br/>3 kicked upstairs to the executive 09:58:40<br/>4 committee. 09:58:41<br/>5 Q. And do you know how often the 09:58:42<br/>6 executive management committee met? 09:58:44<br/>7 A. As I said, I think about twice a 09:58:46<br/>8 year. 09:58:48<br/>9 Q. And did you ever attend one of 09:58:48<br/>10 these meetings? 09:58:51<br/>11 A. Yes. 09:58:52<br/>12 Q. And when was that? 09:58:52<br/>13 A. I attended most of them or some 09:58:53<br/>14 of them, but I don't recall, you know, 09:58:56<br/>15 over the course -- this was a decade ago. 09:58:59<br/>16 I really can't remember which I was at and 09:59:03<br/>17 which I wasn't or even when they met. 09:59:05<br/>18 Q. And you recall Dr. Hassan as the 09:59:06<br/>19 CEO of Pharmacia was on that committee? 09:59:08<br/>20 A. Yes. 09:59:12<br/>21 Q. And do you recall that Carrie 09:59:12<br/>22 Cox was on that committee? 09:59:15<br/>23 A. Well, I do now that I read it. 09:59:16<br/>24 Q. Who is P. Needleman? 09:59:17<br/>25 A. Phil Needleman was the head of 09:59:21</p> <p style="text-align: right;">Page 36</p>                   | <p>1 E. Weiner<br/>2 research and development at Searle. He 09:59:24<br/>3 stayed on for a brief period of time under 09:59:25<br/>4 Pharmacia. I do not know his exact 09:59:29<br/>5 responsibilities during that period of 09:59:29<br/>6 time. 09:59:33<br/>7 Q. And if the Pharmacia merger 09:59:33<br/>8 closed -- and I'll represent to you in 09:59:33<br/>9 closed in April of 2000 -- would this 09:59:36<br/>10 indicate that this document is probably 09:59:38<br/>11 from 2000 if Dr. Needleman is still listed 09:59:40<br/>12 as an executive management committee 09:59:42<br/>13 member? 09:59:44<br/>14 MR. WEISS: I object to the form 09:59:45<br/>15 of the question. 09:59:46<br/>16 Which Pharmacia merger? 09:59:46<br/>17 A. The Warner Lambert merger closed 09:59:49<br/>18 in April, 2000. Pharmacia was sometime in 09:59:52<br/>19 2003. 09:59:54<br/>20 Q. And that's my fault. 09:59:56<br/>21 I'm talking about -- Searle and 09:59:58<br/>22 Pharmacia merged. 09:59:59<br/>23 Do you recall that? 10:00:02<br/>24 A. Yes. 10:00:02<br/>25 Q. And then ultimately Pfizer took 10:00:03</p> <p style="text-align: right;">Page 37</p>                                                                                            |



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| <p>1 E. Weiner<br/>2 over or merged with Pharmacia in -- we 10:00:06<br/>3 can't talk over each other. 10:00:09<br/>4 A. I don't remember exactly when 10:00:11<br/>5 Searle and Pharmacia merged, but if you 10:00:12<br/>6 say it's April of 2000, I'll take your 10:00:13<br/>7 word for it. 10:00:16<br/>8 Q. And he's got to write down 10:00:16<br/>9 everything we say so we can't talk over 10:00:19<br/>10 each other. And that was my fault, but 10:00:21<br/>11 I'll try and do better. It makes it very 10:00:22<br/>12 hard for this gentleman. 10:00:24<br/>13 But just to clarify that, you do 10:00:27<br/>14 recall that Pharmacia merged with Searle 10:00:30<br/>15 at some point in approximately 2000? 10:00:32<br/>16 A. Yes. 10:00:34<br/>17 Q. And then ultimately in 2003 10:00:35<br/>18 Pfizer took over Pharmacia which at that 10:00:38<br/>19 time also included Searle; is that 10:00:43<br/>20 correct? 10:00:44<br/>21 A. Correct. 10:00:44<br/>22 Q. So I'm referring to the fact -- 10:00:44<br/>23 you said Dr. -- you're talking about Dr. 10:00:47<br/>24 Needleman, when you say he stayed on 10:00:50<br/>25 briefly after the Searle merger -- 10:00:54<br/>Page 38</p> | <p>1 E. Weiner<br/>2 A. I'm talking about the 10:00:55<br/>3 Pharmacia/Searle merger. He was never a 10:00:58<br/>4 part of Pfizer. 10:01:02<br/>5 Q. I know it's hard because usually 10:01:05<br/>6 you're having a conversation, but we just 10:01:05<br/>7 have to be careful about not talking over 10:01:05<br/>8 each other, so just maybe wait until I'm 10:01:06<br/>9 done before you answer. 10:01:10<br/>10 So the fact that Dr. Needleman 10:01:12<br/>11 is listed here -- and I'll represent to 10:01:14<br/>12 you that the Pharmacia/Searle merger 10:01:16<br/>13 occurred in April of 2000 -- since you 10:01:19<br/>14 recall him only staying for a short time 10:01:23<br/>15 after that, does this indicate that this 10:01:24<br/>16 org chart is probably from the 2000 time 10:01:25<br/>17 frame or thereabouts? 10:01:27<br/>18 A. My guess would be as good as 10:01:29<br/>19 yours. That sounds reasonable. 10:01:33<br/>20 Q. And then who is J. Papa, if you 10:01:34<br/>21 recall? 10:01:38<br/>22 A. The name is vaguely familiar. I 10:01:38<br/>23 did not recall what his responsibilities 10:01:44<br/>24 were. 10:01:47<br/>25 Q. And what about T. Rothwell? 10:01:48<br/>Page 39</p> |
| <p>1 E. Weiner<br/>2 A. The name doesn't even sound 10:01:50<br/>3 familiar to me. 10:01:53<br/>4 Q. And H. McKinnell refers to Hank 10:01:53<br/>5 McKinnell? 10:01:56<br/>6 A. Correct. 10:01:57<br/>7 Q. And he was the CEO of Pfizer for 10:01:58<br/>8 a time? 10:02:02<br/>9 A. That's right. 10:02:02<br/>10 Q. And J. Niblack, do you know who 10:02:03<br/>11 that is? 10:02:05<br/>12 A. Yes, he was head of R&amp;D. 10:02:05<br/>13 Q. And what about K. Katen? 10:02:08<br/>14 A. She was the senior-most 10:02:10<br/>15 marketing person at that time. 10:02:12<br/>16 Q. And those were the individuals 10:02:12<br/>17 in the executive management committee? 10:02:13<br/>18 A. Correct. 10:02:13<br/>19 Q. Moving down the org chart to the 10:02:15<br/>20 operations committee, that's the committee 10:02:15<br/>21 we were referring to earlier today? 10:02:21<br/>22 A. Yes. 10:02:21<br/>23 Q. And you were on that committee? 10:02:21<br/>24 A. Yes. 10:02:23<br/>25 Q. And Gary Jortner was the 10:02:23<br/>Page 40</p>                                                                                                                                                            | <p>1 E. Weiner<br/>2 co-chair of that committee? 10:02:27<br/>3 A. Yes. 10:02:28<br/>4 Q. And J. Feczko, that refers to 10:02:28<br/>5 Joe Feczko; is that correct? 10:02:32<br/>6 A. Yes. 10:02:34<br/>7 Q. And he was the chief medical 10:02:34<br/>8 officer at Pfizer? 10:02:36<br/>9 A. Yes. So I guess he was on that 10:02:37<br/>10 committee then, at least at that time. 10:02:39<br/>11 Q. And Dr. Geis was on that 10:02:43<br/>12 committee as well? 10:02:45<br/>13 A. Yes. 10:02:45<br/>14 Q. And do you know who M. 10:02:46<br/>15 Cunningham is? 10:02:50<br/>16 A. He was one of the marketing 10:02:50<br/>17 people at Searle and/or Pharmacia. 10:02:53<br/>18 Q. Do you know who P. Isakson was? 10:03:02<br/>19 A. Yes. 10:03:05<br/>20 Q. And who was he? 10:03:05<br/>21 A. He was one of the research and 10:03:07<br/>22 development people and had been at Searle, 10:03:09<br/>23 stayed on again for some period of time 10:03:11<br/>24 after the merger. 10:03:14<br/>25 Q. And would generally each of the 10:03:14<br/>Page 41</p>                                                                                                                                                          |

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| <p>1 E. Weiner<br/>2 individuals who were members of the 10:03:16<br/>3 committee attend the meetings either via 10:03:17<br/>4 videoconference or in person? 10:03:22<br/>5 MR. WEISS: I object to the form 10:03:24<br/>6 of that question. 10:03:25<br/>7 A. In general, yes. 10:03:25<br/>8 Q. And these would generally occur 10:03:27<br/>9 on approximately a monthly basis; is that 10:03:29<br/>10 correct? 10:03:31<br/>11 A. As I said, I believe they were a 10:03:31<br/>12 little less frequent than that. It could 10:03:33<br/>13 have been as infrequent as every three 10:03:36<br/>14 months. 10:03:40<br/>15 Q. And were there minutes taken at 10:03:40<br/>16 these meetings? 10:03:54<br/>17 A. Generally, yes. 10:04:01<br/>18 Q. And who would take those 10:04:01<br/>19 minutes? 10:04:01<br/>20 A. That probably -- well, again 10:04:01<br/>21 I'll speculate, my memory sort of fails me 10:04:03<br/>22 there, but usually there's a project 10:04:07<br/>23 manager type person that comes to these 10:04:09<br/>24 and they change from time to time. 10:04:11<br/>25 Q. And generally would they be 10:04:12</p> <p style="text-align: right;">Page 42</p> | <p>1 E. Weiner<br/>2 circulated to members of the committee? 10:04:14<br/>3 A. Yes. 10:04:15<br/>4 Q. And you would receive those in 10:04:16<br/>5 the ordinary course of your employment? 10:04:18<br/>6 MR. WEISS: I object to the form 10:04:19<br/>7 of the question. 10:04:20<br/>8 A. That's likely, yes. 10:04:20<br/>9 Q. And do you know where they would 10:04:21<br/>10 be stored? Would they have been stored on 10:04:22<br/>11 your e-mail server? 10:04:26<br/>12 A. Formally, I have no idea. I 10:04:27<br/>13 don't know. 10:04:31<br/>14 Q. But you would regularly receive 10:04:31<br/>15 them after the meetings? 10:04:33<br/>16 A. As a rule, I recall that that 10:04:34<br/>17 would be the case. 10:04:37<br/>18 Q. And do you know if there were 10:04:38<br/>19 meetings of the executive committee -- 10:04:42<br/>20 minutes of the executive committee 10:04:45<br/>21 meetings? 10:04:46<br/>22 A. I would assume so, but again 10:04:47<br/>23 that's speculative on my part. If you 10:04:52<br/>24 showed me some, I wouldn't be surprised. 10:04:55<br/>25 Q. Would you have received those? 10:04:58</p> <p style="text-align: right;">Page 43</p> |
| <p>1 E. Weiner<br/>2 A. If they were written, it's 10:05:00<br/>3 likely that I would have received them. 10:05:02<br/>4 Q. Well, if the ops committee had 10:05:03<br/>5 minutes -- 10:05:05<br/>6 A. So it's likely, yes. I just 10:05:06<br/>7 don't firmly recollect actually ever 10:05:08<br/>8 seeing one. 10:05:11<br/>9 Q. But it would be logical to 10:05:13<br/>10 conclude since the -- 10:05:16<br/>11 A. I wouldn't be surprised. 10:05:17<br/>12 Q. It would be logical to conclude 10:05:19<br/>13 that, since the operations committee has 10:05:21<br/>14 minutes, that the executive committee 10:05:23<br/>15 would as well? 10:05:23<br/>16 MR. WEISS: I object to the form 10:05:24<br/>17 of the question. 10:05:25<br/>18 A. Yes. 10:05:26<br/>19 (Whereupon, an e-mail dated 10:05:32<br/>20 April 16, 2000 was marked Plaintiff's 10:05:32<br/>21 Exhibit 163 for identification.) 10:05:33<br/>22 Q. I want to show you what I'm 10:05:33<br/>23 marking as Plaintiff's Exhibit 163. 10:05:34<br/>24 Could you please take a look at 10:05:54<br/>25 Plaintiff's Exhibit 163. 10:05:56</p> <p style="text-align: right;">Page 44</p>                             | <p>1 E. Weiner<br/>2 MR. SAHAM: And for the record, 10:05:58<br/>3 Plaintiff's Exhibit 163 bears Bates 10:05:59<br/>4 numbers DEFS 00392115 through 176. 10:06:02<br/>5 The first page is an e-mail from 10:06:10<br/>6 Leland Loose to Ethan Weiner and 10:06:13<br/>7 others dated April 16, 2000 and it 10:06:17<br/>8 attaches slides for the ACP 10:06:20<br/>9 presentation of the CLASS data. 10:06:24<br/>10 Q. And I'd ask you, do you 10:06:29<br/>11 recognize this document? 10:06:31<br/>12 A. I have no independent 10:06:32<br/>13 recollection of it. But again, it's an 10:06:34<br/>14 e-mail that I would likely have received 10:06:37<br/>15 and read. 10:06:39<br/>16 Q. And you would have received it 10:06:40<br/>17 and read it in the ordinary scope of your 10:06:41<br/>18 employment at Pfizer? 10:06:43<br/>19 A. Correct. 10:06:44<br/>20 MR. WEISS: I object to the form 10:06:45<br/>21 of the question. 10:06:46<br/>22 Q. And the heading or the text of 10:06:46<br/>23 the e-mail states, "this is the ACP 10:06:53<br/>24 presentation of the CLASS data;" correct? 10:06:55<br/>25 A. Yes. 10:06:58</p> <p style="text-align: right;">Page 45</p> |



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| <p>1 E. Weiner<br/>2 Q. And what is the ACP? 10:06:59<br/>3 A. I believe it's the American 10:07:00<br/>4 College of Physicians, at least that's 10:07:03<br/>5 commonly what the acronym is. As I 10:07:06<br/>6 recall, shortly after the results came 10:07:09<br/>7 out, they were presented at various 10:07:11<br/>8 scientific meetings and so it's likely 10:07:13<br/>9 that this was the American College of 10:07:15<br/>10 Physicians at which it was presented. 10:07:19<br/>11 Q. The CLASS results were presented 10:07:20<br/>12 there? 10:07:22<br/>13 A. Yes. 10:07:22<br/>14 Q. And the e-mail then continues 10:07:22<br/>15 on, "this is a little different format 10:07:25<br/>16 than what was shown at the ops comm in 10:07:28<br/>17 that this highlights the 10:07:31<br/>18 thromboembolic/cardiorenal data." 10:07:40<br/>19 Is the ops comm there, is that 10:07:41<br/>20 referring to the operations committee 10:07:43<br/>21 which you served on? 10:07:44<br/>22 A. Yes. 10:07:46<br/>23 Q. So is it accurate that a set of 10:07:46<br/>24 slides with respect to the CLASS data was 10:07:49<br/>25 shown at the ops committee in early April 10:07:52<br/>Page 46</p> | <p>1 E. Weiner<br/>2 of 2000? 10:07:54<br/>3 MR. WEISS: I object to the form 10:07:56<br/>4 of the question. 10:07:56<br/>5 A. Yes, that would be the committee 10:07:58<br/>6 we discussed previously. 10:07:59<br/>7 Q. And you received these slides 10:08:01<br/>8 again from Dr. Loose on or about April 16, 10:08:05<br/>9 2000? 10:08:07<br/>10 A. Yes. 10:08:08<br/>11 Q. And you received them in the 10:08:09<br/>12 ordinary scope of your employment at 10:08:10<br/>13 Pfizer? 10:08:12<br/>14 MR. WEISS: I object to the form 10:08:13<br/>15 of the question. 10:08:15<br/>16 A. Yes. 10:08:16<br/>17 Q. I'd like to turn your attention 10:08:16<br/>18 specifically to slide number twenty-two of 10:08:18<br/>19 the deck of slides which make up 10:08:24<br/>20 Plaintiff's Exhibit 163. 10:08:28<br/>21 A. Okay. 10:08:30<br/>22 Q. And that slide states, 10:08:31<br/>23 "six-month ulcer application and 10:08:36<br/>24 symptomatic ulcer rate-non-ASA users." 10:08:38<br/>25 What's being communicated in 10:08:45<br/>Page 47</p>                                                                                                                                                                                                                                                                                                |
| <p>1 E. Weiner<br/>2 that slide? 10:08:47<br/>3 A. Those are the combined -- well, 10:08:48<br/>4 those complicated and complicated plus 10:08:51<br/>5 symptomatic ulcers among those subjects in 10:08:54<br/>6 the study who were not taking aspirin 10:08:57<br/>7 concomitantly. 10:09:02<br/>8 Q. So the table on the left is for 10:09:03<br/>9 ulcer complications at six months for 10:09:07<br/>10 patients that were not taking aspirin; is 10:09:10<br/>11 that correct? 10:09:14<br/>12 A. Yes. 10:09:14<br/>13 Q. And that shows a statistically 10:09:14<br/>14 significant result; is that correct? 10:09:16<br/>15 A. Yes. 10:09:17<br/>16 Q. And it's statistically 10:09:17<br/>17 significant because it's less than .05; is 10:09:19<br/>18 that correct? 10:09:20<br/>19 A. That's the level that's 10:09:20<br/>20 generally deemed to divide significant 10:09:22<br/>21 from non-significant. 10:09:25<br/>22 Q. And what does it mean for a 10:09:26<br/>23 result to be statistically significant? 10:09:28<br/>24 A. That's been the subject of 10:09:31<br/>25 debate for many years, but in general 10:09:32<br/>Page 48</p>                                                  | <p>1 E. Weiner<br/>2 what's taken as significant most of the 10:09:35<br/>3 time is if a finding is deemed by whatever 10:09:37<br/>4 statistical analysis a test is used to 10:09:42<br/>5 have less than one in twenty chance of 10:09:45<br/>6 being a random finding. 10:09:49<br/>7 Q. And if it's not statistically 10:09:52<br/>8 significant, you can't claim a difference 10:09:54<br/>9 for a scientific purpose; correct? 10:09:57<br/>10 MR. WEISS: I object to the form 10:10:04<br/>11 of the question. 10:10:04<br/>12 A. It's not that black and white. 10:10:04<br/>13 Oftentimes results that are somewhere 10:10:04<br/>14 between one in ten, one in twenty are 10:10:07<br/>15 reported out and discussed and people need 10:10:11<br/>16 to evaluate that on its merits. So the 10:10:14<br/>17 .05 level is used for regulatory purposes 10:10:19<br/>18 most of the time and it's very widely used 10:10:23<br/>19 in scientific circles, but things that are 10:10:26<br/>20 between .1 and .05 oftentimes are looked 10:10:29<br/>21 at as being possibilities or possibly have 10:10:33<br/>22 meaning, perhaps something that should be 10:10:39<br/>23 tested in further clinical studies. 10:10:42<br/>24 Q. Per the CLASS protocol, if you 10:10:44<br/>25 didn't achieve a P value below a .05, you 10:10:47<br/>Page 49</p> |

1 E. Weiner  
2 couldn't claim a difference; is that 10:10:53  
3 correct? 10:10:55  
4 MR. WEISS: I object to the form 10:10:55  
5 of the question. 10:10:56  
6 A. In the stepdown procedure in the 10:10:56  
7 formal analysis plan for the primary 10:10:59  
8 endpoint, that was correct. That did not 10:11:01  
9 in any way mean that results can't be 10:11:03  
10 reported or discussed or that they have no 10:11:08  
11 meaning. 10:11:10  
12 Q. But you couldn't claim 10:11:10  
13 statistical significance if you didn't 10:11:10  
14 achieve .05; is that correct? 10:11:11  
15 A. At the .05 level, yes, that's 10:11:14  
16 correct. 10:11:19  
17 Q. I'd like to turn your attention 10:11:19  
18 to the slide on page forty-two of the 10:11:21  
19 Exhibit 163. 10:11:26  
20 MR. WEISS: Did you say 10:11:31  
21 forty-two? 10:11:34  
22 MR. SAHAM: Yes, on the bottom 10:11:34  
23 right-hand corner. 10:11:36  
24 Q. It's the slide that's labeled 10:11:38  
25 twelve-month data. 10:11:40

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1 E. Weiner  
2 Q. And turn to the page before 10:12:27  
3 this, page forty-one, do you see that 10:12:30  
4 slide? 10:12:32  
5 A. Yes. 10:12:32  
6 Q. And what does that say? 10:12:38  
7 A. That's the divider, I guess, 10:12:39  
8 between the first set of slides and the 10:12:41  
9 second set. 10:12:43  
10 Q. And the word "and" appears on 10:12:44  
11 page forty-one; is that correct? 10:12:49  
12 A. Yes. 10:12:49  
13 Q. And is that because the slides 10:12:50  
14 forty-two through sixty-one were not 10:12:52  
15 shared publicly with the attendees at the 10:12:55  
16 American College of Physicians? 10:12:57  
17 MR. WEISS: I object to the form 10:12:58  
18 of the question. 10:12:59  
19 A. Well, I wasn't there and I 10:12:59  
20 wasn't presenting, so I can offer you what 10:13:01  
21 I think is going on, but it's my opinion. 10:13:03  
22 Q. What do you think it's going on? 10:13:05  
23 A. That these are backup slides to 10:13:07  
24 answer questions. And so if somebody had 10:13:10  
25 asked, well, do you have additional data, 10:13:13

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1 E. Weiner  
2 Do you see that? 10:11:41  
3 A. Yes. 10:11:41  
4 Q. And what's being communicated 10:11:42  
5 here? 10:11:44  
6 A. It is the same set of 10:11:44  
7 comparisons as previously. 10:11:50  
8 Q. But it's for twelve months 10:11:52  
9 instead of six months; is that correct? 10:11:54  
10 A. Yes. 10:11:56  
11 Q. And the left column is for ulcer 10:11:56  
12 complications; is that correct? 10:12:00  
13 A. That is correct. 10:12:01  
14 Q. And with respect to non-ASA at 10:12:01  
15 twelve months for complicated ulcers, the 10:12:05  
16 comparison between celecoxib and the 10:12:08  
17 pooled NSAIDs was not statistically 10:12:08  
18 significant; is that correct? 10:12:13  
19 A. It was more than .05, yes. 10:12:14  
20 Q. So the statistical significance 10:12:17  
21 of the comparison that was shown at six 10:12:21  
22 months did not hold at twelve months; is 10:12:23  
23 that correct? 10:12:25  
24 A. At the .05 level, yes, that's 10:12:25  
25 correct. 10:12:27

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1 E. Weiner  
2 what do you think's going on after that, 10:13:15  
3 these slides would have been shown. Did 10:13:18  
4 someone ask that and was it shown? I 10:13:21  
5 don't know not having been there. 10:13:24  
6 Q. But you were privy to the 10:13:25  
7 twelve-month data; is that correct? 10:13:28  
8 A. At that time I -- again, I don't 10:13:30  
9 exactly recall what I knew when. It's 10:13:35  
10 likely that I was because probably that 10:13:38  
11 was presented at the operations committee, 10:13:40  
12 but I don't have that presentation in 10:13:43  
13 front of me and it was ten years ago so I 10:13:44  
14 don't know exactly what was and what 10:13:47  
15 wasn't presented. 10:13:49  
16 Q. But you received this complete 10:13:50  
17 deck of slides from Dr. Loose? 10:13:52  
18 A. At the time that I saw this -- 10:13:54  
19 and again, I'm also speculating because my 10:13:56  
20 independent recollection is not good after 10:13:59  
21 ten years, but it looks as if I received 10:14:02  
22 it after the fact. 10:14:05  
23 Q. But according to this, you 10:14:06  
24 received it on April 16, 2000; correct? 10:14:08  
25 A. Right. Or at least after the 10:14:11

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| <p>1 E. Weiner<br/>2 fact in terms of not necessarily when it 10:14:13<br/>3 was given but input into it and in that 10:14:14<br/>4 the e-mail doesn't say comments are 10:14:18<br/>5 requested. This is sort of a fete 10:14:20<br/>6 accompli. 10:14:23<br/>7 Q. And as we observed in the 10:14:23<br/>8 minutes from the April 6, 2000 operations 10:14:26<br/>9 committee meeting, the distribution of the 10:14:30<br/>10 slides presented there were restricted to 10:14:32<br/>11 need-to-know basis; correct? 10:14:35<br/>12 A. Yes. 10:14:37<br/>13 Q. And that means they weren't 10:14:37<br/>14 publicly distributed; correct? 10:14:39<br/>15 MR. WEISS: I object to the form 10:14:40<br/>16 of the question. 10:14:41<br/>17 A. Outside of the company? They 10:14:41<br/>18 would not have been. The first public 10:14:45<br/>19 distribution would have been several days 10:14:47<br/>20 later at the scientific meetings. 10:14:49<br/>21 Q. And turning to page forty-three 10:14:52<br/>22 of Exhibit 163, the slide states, "ulcer 10:14:55<br/>23 complication rates all over twelve 10:15:03<br/>24 months." 10:15:06<br/>25 What's being communicated there? 10:15:06<br/>Page 54</p> | <p>1 E. Weiner<br/>2 A. This is a graph of the crude 10:15:08<br/>3 rate of ulcers which I presume the 10:15:11<br/>4 complication rate is in percentage on the 10:15:15<br/>5 Y axis versus time on the X axis for 10:15:17<br/>6 celecoxib versus the pooled NSAIDs. 10:15:25<br/>7 Q. And it's comparing the crude 10:15:29<br/>8 ulcer rate between celecoxib and the crude 10:15:29<br/>9 rate -- 10:15:31<br/>10 MR. SAHAM: Strike that. 10:15:31<br/>11 Q. It's comparing the crude ulcer 10:15:32<br/>12 complication rate between celecoxib and 10:15:32<br/>13 the pooled NSAIDs over time; is that 10:15:37<br/>14 correct? 10:15:37<br/>15 A. Yes. 10:15:40<br/>16 Q. And it shows that there's a 10:15:40<br/>17 larger difference at six months than at 10:15:43<br/>18 twelve months between the two drugs; is 10:15:45<br/>19 that correct? 10:15:47<br/>20 MR. WEISS: I object to the form 10:15:47<br/>21 of the question. 10:15:48<br/>22 A. Yes. 10:15:49<br/>23 Q. Looking at the next page of 10:15:49<br/>24 Exhibit 163, page forty-four, the slide's 10:16:01<br/>25 entitled Ulcer Complication Rates, paren, 10:16:01<br/>Page 55</p>                                             |
| <p>1 E. Weiner<br/>2 Non-ASA, closed paren, Over Twelve Months. 10:16:04<br/>3 Do you see that? 10:16:08<br/>4 A. Yes. 10:16:09<br/>5 Q. What's being communicated there? 10:16:09<br/>6 A. The same thing as in previous 10:16:10<br/>7 slides except that it is a subset of 10:16:12<br/>8 patients that were not taking aspirin. 10:16:14<br/>9 Q. And again, the difference in the 10:16:18<br/>10 crude rate between celecoxib and the 10:16:19<br/>11 comparator NSAIDs at six months is greater 10:16:22<br/>12 than the difference at twelve months; is 10:16:25<br/>13 that correct? 10:16:27<br/>14 A. Not strikingly so but yes, to a 10:16:27<br/>15 small degree. 10:16:33<br/>16 Q. Where it was strikingly 10:16:33<br/>17 different in the prior slide, page 10:16:33<br/>18 forty-three of Exhibit 163; is that 10:16:34<br/>19 correct? 10:16:37<br/>20 MR. WEISS: I object to the form 10:16:37<br/>21 of the question. 10:16:38<br/>22 A. That I wouldn't go so far as to 10:16:38<br/>23 say, but it's certainly more of a 10:16:42<br/>24 difference between six and twelve for that 10:16:44<br/>25 slide than this one. 10:16:47<br/>Page 56</p>                                           | <p>1 E. Weiner<br/>2 Q. Looking at page forty-three of 10:16:48<br/>3 the exhibit, the difference between the 10:16:50<br/>4 two drugs is approximately .3 at six 10:16:51<br/>5 months and closer to .1 at twelve months; 10:16:56<br/>6 is that correct? And I'm looking at page 10:17:06<br/>7 forty-three. 10:17:10<br/>8 A. Yes, for the crude rate, that 10:17:10<br/>9 would be correct. 10:17:13<br/>10 Q. Turning your attention to page 10:17:14<br/>11 forty-five of Exhibit 163, the slide 10:17:17<br/>12 that's entitled Ulcer Complication Rates, 10:17:20<br/>13 paren, ASA Users, closed paren, Over 10:17:23<br/>14 Twelve Months, what's being communicated 10:17:27<br/>15 there? 10:17:30<br/>16 A. Again, it's a crude rate versus 10:17:30<br/>17 time for the subpopulation that was using 10:17:31<br/>18 aspirin. 10:17:33<br/>19 Q. And at six months the rates 10:17:37<br/>20 between celecoxib and the comparator 10:17:40<br/>21 NSAIDs was approximately the same; is that 10:17:42<br/>22 correct? 10:17:43<br/>23 A. That's correct. 10:17:43<br/>24 Q. And at twelve months the rates 10:17:44<br/>25 for celecoxib is actually greater than the 10:17:46<br/>Page 57</p> |

1 E. Weiner  
2 pooled NSAIDs; is that correct? 10:17:49  
3 A. I would say, considering the 10:17:50  
4 vagaries of clinical trials in 10:17:52  
5 variability, that they are the same at 10:17:56  
6 both three and twelve months. So I 10:17:57  
7 wouldn't say that Celebrex is better at 10:17:57  
8 three nor would I say that it's worse at 10:18:00  
9 twelve. 10:18:03  
10 Q. But the crude rate is higher for 10:18:04  
11 Celebrex than the comparator NSAIDs at 10:18:04  
12 twelve months; is that correct? 10:18:06  
13 A. Trivially higher. But that's 10:18:07  
14 probably one patient or something like 10:18:09  
15 that. 10:18:12  
16 Q. There are only approximately 10:18:12  
17 forty patients that suffered complicated 10:18:15  
18 ulcers in the entire trial; is that 10:18:17  
19 correct? 10:18:19  
20 A. I believe that's so. 10:18:19  
21 (Whereupon, an e-mail dated 10:18:19  
22 April 17, 2000 was marked Plaintiff's 10:18:19  
23 Exhibit 164 for identification.) 10:18:31  
24 Q. I want to show you what I'm 10:18:31  
25 marking as Plaintiff's Exhibit 164. 10:18:33  
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1 E. Weiner  
2 not include the twelve-month data in the 10:19:49  
3 slides we just discussed; is that correct? 10:19:55  
4 A. Yes. However, what's not 10:19:57  
5 included here either are any backup slides 10:20:08  
6 and I can't tell you that's because they 10:20:11  
7 don't exist or because they just weren't 10:20:13  
8 included in what was intended as the 10:20:15  
9 presentation as opposed to the materials 10:20:18  
10 used to answer questions. 10:20:20  
11 Q. But the final slide set that was 10:20:21  
12 sent to you on April 17, 2000 does not 10:20:23  
13 include twelve-month data; is that 10:20:27  
14 correct? 10:20:31  
15 MR. WEISS: I object to the form 10:20:31  
16 of the question. 10:20:32  
17 A. Yes, but as I said, the 10:20:33  
18 distinction between this and the previous 10:20:33  
19 slide deck is that that had the backup 10:20:35  
20 slides at the end of it. I can't tell you 10:20:37  
21 whether there were no backup slides 10:20:40  
22 created or they were just circulating what 10:20:43  
23 they actually intended to present barring 10:20:45  
24 any questions being asked. In other 10:20:48  
25 words, were there additional slides with 10:20:50  
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1 E. Weiner  
2 Could you please take a look at 10:18:47  
3 Plaintiff's Exhibit 164. 10:18:49  
4 MR. SAHAM: And for the record, 10:18:54  
5 Plaintiff's Exhibit 164 bears the 10:18:55  
6 Bates numbers DEFS 00392205 10:18:56  
7 through 246. Again, it's a one-page 10:19:03  
8 cover e-mail attaching slides. It's 10:19:07  
9 from Leland Loose to Ethan Weiner and 10:19:11  
10 others. And the e-mail is dated 10:19:14  
11 September 17, 2000 and it states, 10:19:18  
12 "this is the 'final' slide set shown 10:19:20  
13 at the ACP meeting in Philadelphia on 10:19:24  
14 April 25, Leland." 10:19:27  
15 Q. Would you have received these 10:19:32  
16 slides in the ordinary course of your 10:19:35  
17 employment at Pfizer? 10:19:37  
18 A. Yes. 10:19:37  
19 MR. WEISS: I object to the form 10:19:38  
20 of that question, please. 10:19:38  
21 Q. And this indicates that this is 10:19:39  
22 the actual final set shown at the ACP 10:19:41  
23 presentation; is that correct? 10:19:45  
24 A. Yes. 10:19:46  
25 Q. And in fact, this slide set does 10:19:47  
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1 E. Weiner  
2 twelve-month data that they would have 10:20:53  
3 reserved to answer questions as appeared 10:20:55  
4 to be the intent in the previous slide 10:20:57  
5 deck or not and I can't not -- I don't 10:20:59  
6 have any independent recollection of that. 10:21:02  
7 It would have an assumption on my part to 10:21:05  
8 say that there were no backup slides with 10:21:08  
9 twelve-month data. It would also be an 10:21:10  
10 assumption on my part to say that there 10:21:14  
11 were. I just don't know. 10:21:14  
12 Q. You didn't attend the ACP 10:21:14  
13 meeting in Philadelphia? 10:21:14  
14 A. No, I did not. 10:21:18  
15 Q. So you don't know whether 10:21:18  
16 twelve-month data was presented there? 10:21:21  
17 A. That's correct. 10:21:23  
18 Q. But you do know that the JAMA 10:21:24  
19 article published in September, 2000, that 10:21:24  
20 didn't include any twelve-month data; 10:21:26  
21 correct? 10:21:27  
22 A. Yes. 10:21:28  
23 Q. So would it be consistent if the 10:21:29  
24 data was being presented in the same 10:21:32  
25 manner that it was being presented to JAMA 10:21:36  
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| <p>1 E. Weiner<br/>2 that only the six-month data was presented 10:21:36<br/>3 at ACP? 10:21:38<br/>4 MR. WEISS: I object to the form 10:21:38<br/>5 the question. 10:21:39<br/>6 A. There's one big difference 10:21:40<br/>7 between a journal article and a 10:21:43<br/>8 presentation in that there's no question 10:21:44<br/>9 and answer available when one reads a 10:21:46<br/>10 journal article. Here there is. So as I 10:21:53<br/>11 said, they may have had twelve-month data 10:22:01<br/>12 as backup material. Someone may have 10:22:01<br/>13 asked a question that may have been 10:22:01<br/>14 presented or they may, in fact, not have 10:22:03<br/>15 brought any with them. I don't know. 10:22:06<br/>16 This slide deck does not definitely tell 10:22:09<br/>17 me one way or the other whether that was 10:22:12<br/>18 the case. 10:22:13<br/>19 Q. But you're not testifying under 10:22:14<br/>20 oath that twelve-month data was presented 10:22:14<br/>21 at the ACP? 10:22:15<br/>22 A. No, I have no way of knowing. 10:22:15<br/>23 That's what I'm testifying. But I'm also 10:22:17<br/>24 saying that I have no way of knowing that 10:22:21<br/>25 it positively wasn't based on what you're 10:22:23</p> <p style="text-align: right;">Page 62</p> | <p>1 E. Weiner<br/>2 showing me. 10:22:26<br/>3 Q. Did you participate in the 10:22:26<br/>4 decision to present only the six-month 10:22:28<br/>5 data at JAMA? 10:22:31<br/>6 A. No. 10:22:32<br/>7 Q. Do you know who made that 10:22:33<br/>8 decision? 10:22:34<br/>9 A. No. 10:22:34<br/>10 Q. Did you participate in the 10:22:34<br/>11 decision to utilize six-month data as part 10:22:37<br/>12 of a press release discussing CLASS that 10:22:41<br/>13 went out publicly on April 17, 2000, 10:22:44<br/>14 approximately the same time? 10:22:47<br/>15 MR. WEISS: I object to the form 10:22:49<br/>16 of the question. 10:22:49<br/>17 A. I do not recall seeing that 10:22:50<br/>18 press release before it went out. It's 10:22:56<br/>19 possible that it went by my desk, but I 10:22:59<br/>20 don't recall. 10:23:02<br/>21 Q. Did you participate in the 10:23:02<br/>22 decision to only utilize six-month data in 10:23:03<br/>23 the press release that went out on 10:23:06<br/>24 April 17, 2000? 10:23:10<br/>25 MR. WEISS: I object to the form 10:23:11</p> <p style="text-align: right;">Page 63</p>                                                                                                                         |
| <p>1 E. Weiner<br/>2 of the question. 10:23:12<br/>3 A. I do not recall reviewing it or 10:23:12<br/>4 being asked to decide on that issue, so 10:23:14<br/>5 I'd have to say no. 10:23:15<br/>6 Q. Did you participate in any 10:23:17<br/>7 decision at Pfizer to utilize only 10:23:19<br/>8 six-month data as opposed to twelve-month 10:23:22<br/>9 data for any purpose? 10:23:24<br/>10 MR. WEISS: I object to the form 10:23:26<br/>11 of that question. 10:23:28<br/>12 A. I'm trying to think where that 10:23:29<br/>13 would have come up besides the instances 10:23:36<br/>14 that you -- I was -- yes, in terms of 10:23:39<br/>15 which data we were going to emphasize at 10:23:45<br/>16 the advisory committee, I was involved in 10:23:48<br/>17 those discussions. 10:23:50<br/>18 Q. Were you involved in any such 10:23:51<br/>19 discussions in the April, 2000 time frame? 10:23:53<br/>20 A. Not that I recall in terms of a 10:23:55<br/>21 decision-making capacity, in other words 10:24:00<br/>22 you know, asked to should we present this 10:24:04<br/>23 or present that. I think at that point 10:24:06<br/>24 that was mostly being driven by the 10:24:10<br/>25 Searle/Pharmacia side of things. 10:24:17</p> <p style="text-align: right;">Page 64</p>   | <p>1 E. Weiner<br/>2 Q. Would that decision have been 10:24:20<br/>3 made at the operations committee meeting? 10:24:23<br/>4 A. To the extent that the 10:24:26<br/>5 operations committee I suppose could have 10:24:29<br/>6 taken up debate on that issue at that 10:24:31<br/>7 time, then yes. Do I recall formal 10:24:34<br/>8 discussion six versus twelve? No. 10:24:38<br/>9 Q. Would there be minutes 10:24:41<br/>10 reflecting that discussion? 10:24:43<br/>11 A. Yes, if a discussion had taken 10:24:44<br/>12 place, it would have been in the minutes. 10:24:47<br/>13 Q. Do you recall whether that 10:24:48<br/>14 discussion occurred at any executive 10:24:50<br/>15 committee meeting you were attending? 10:24:52<br/>16 A. I don't recall that. 10:24:53<br/>17 Q. I want to show you what's 10:25:13<br/>18 previously been marked as Plaintiff's 10:25:14<br/>19 Exhibit 115. 10:25:17<br/>20 Could you please take a look at 10:25:24<br/>21 that document. 10:25:26<br/>22 MR. SAHAM: And for the record, 10:25:30<br/>23 Plaintiff's Exhibit 115 bearing Bates 10:25:31<br/>24 numbers DEFS 00723820 through 033. 10:25:35<br/>25 And the first page is a cover e-mail 10:25:47</p> <p style="text-align: right;">Page 65</p> |

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| <p>1 E. Weiner</p> <p>2 from Leland Loose to Ethan Weiner and 10:25:49</p> <p>3 others and it appears to be dated 10:25:54</p> <p>4 April 28, 2000. No, I'm sorry, 10:25:59</p> <p>5 April 30, 2000. 10:26:04</p> <p>6 Q. Would you have received this 10:26:06</p> <p>7 document, this e-mail which included the 10:26:10</p> <p>8 final report for a multi-center 10:26:13</p> <p>9 double-blind parallel group study 10:26:17</p> <p>10 comparing the incidence of clinically 10:26:19</p> <p>11 significant upper gastrointestinal events 10:26:19</p> <p>12 between celecoxib four hundred mg BID and 10:26:22</p> <p>13 ibuprofen eight hundred mg TID or 10:26:28</p> <p>14 diclofenac seventy-five mg BID on or about 10:26:29</p> <p>15 April 30, 2000? 10:26:34</p> <p>16 A. Yes. 10:26:36</p> <p>17 Q. And you would have received it 10:26:36</p> <p>18 in the ordinary scope of your employment 10:26:37</p> <p>19 at Pfizer? 10:26:38</p> <p>20 MR. WEISS: I object to the form 10:26:39</p> <p>21 of the question. 10:26:40</p> <p>22 A. Yes. 10:26:41</p> <p>23 Q. And what is this document? 10:26:41</p> <p>24 A. This is the textural part of the 10:26:47</p> <p>25 study report. 10:26:53</p> <p style="text-align: right;">Page 66</p> | <p>1 E. Weiner</p> <p>2 Q. And the study dates listed on 10:26:55</p> <p>3 the second page of the document indicate 10:26:59</p> <p>4 that the study ended on March 17, 2000; is 10:27:01</p> <p>5 that correct? 10:27:05</p> <p>6 A. Yes. 10:27:05</p> <p>7 Q. And does that indicate that the 10:27:10</p> <p>8 data would have been unblinded on about 10:27:13</p> <p>9 March 17, 2000? 10:27:16</p> <p>10 A. Usually the unblinding comes 10:27:17</p> <p>11 after database lock which is some variable 10:27:21</p> <p>12 amount of time after the last study -- the 10:27:25</p> <p>13 last patient, last visit. I do not recall 10:27:27</p> <p>14 whether their definition of the end date 10:27:31</p> <p>15 here is last patient, last visit or 10:27:33</p> <p>16 database lock. 10:27:36</p> <p>17 Q. So if March 17 was the database 10:27:37</p> <p>18 lock, that would mean that is when the 10:27:39</p> <p>19 data was unblinded? 10:27:41</p> <p>20 A. You could then analyze it and 10:27:43</p> <p>21 see what was going on which also takes 10:27:45</p> <p>22 some amount of time. If it was last 10:27:48</p> <p>23 patient, last visit, then it would be a 10:27:50</p> <p>24 matter of weeks, sometimes longer, to 10:27:52</p> <p>25 clean the database, lock it, and then 10:27:55</p> <p style="text-align: right;">Page 67</p> |
| <p>1 E. Weiner</p> <p>2 unblind it. 10:28:00</p> <p>3 Q. And turning your attention to up 10:28:01</p> <p>4 in the top right-hand corner page five of 10:28:01</p> <p>5 two hundred thirteen. 10:28:05</p> <p>6 Are you with me? 10:28:06</p> <p>7 A. Yes. 10:28:08</p> <p>8 Q. And there's two tables on this 10:28:08</p> <p>9 page; correct? 10:28:10</p> <p>10 A. Yes. 10:28:11</p> <p>11 Q. And the first table is summary 10:28:12</p> <p>12 of CSUGIE incidents first six months; is 10:28:15</p> <p>13 that correct? 10:28:21</p> <p>14 A. Yes. 10:28:21</p> <p>15 Q. And the second table is summary 10:28:21</p> <p>16 of CSUGIE incidents the entire study 10:28:24</p> <p>17 period; is that correct? 10:28:27</p> <p>18 A. Yes. 10:28:28</p> <p>19 Q. In looking at the first column 10:28:28</p> <p>20 is the number of CSUGIEs suffered by 10:28:32</p> <p>21 celecoxib; is that correct? 10:28:40</p> <p>22 A. Yes, that's correct. 10:28:40</p> <p>23 Q. And after six months there were 10:28:41</p> <p>24 eleven uncensored CSUGIEs in the celecoxib 10:28:43</p> <p>25 treatment group; is that correct? 10:28:48</p> <p style="text-align: right;">Page 68</p>                                                                          | <p>1 E. Weiner</p> <p>2 A. Uncensored. 10:28:49</p> <p>3 Q. So there were eleven uncensored 10:28:55</p> <p>4 CSUGIEs in the celecoxib group as of six 10:28:55</p> <p>5 months? 10:29:01</p> <p>6 A. Yes, that's correct. 10:29:01</p> <p>7 Q. And as of the entire study 10:29:02</p> <p>8 period, there were seventeen of those 10:29:08</p> <p>9 events? 10:29:09</p> <p>10 A. Yes. 10:29:09</p> <p>11 Q. So there were approximately six 10:29:10</p> <p>12 of the seventeen celecoxib CSUGIEs or 10:29:12</p> <p>13 complicated ulcers occurred in the -- or 10:29:16</p> <p>14 after six months of the trial; is that 10:29:19</p> <p>15 correct? 10:29:21</p> <p>16 A. Yes. 10:29:21</p> <p>17 Q. And next to that is the number 10:29:21</p> <p>18 of CSUGIEs for diclofenac; is that 10:29:24</p> <p>19 correct? 10:29:26</p> <p>20 A. Yes. 10:29:26</p> <p>21 Q. And there were nine of those 10:29:27</p> <p>22 after six months for diclofenac; is that 10:29:32</p> <p>23 correct? 10:29:34</p> <p>24 A. Yes. 10:29:34</p> <p>25 Q. And there were ten after the 10:29:34</p> <p style="text-align: right;">Page 69</p>                                                                                                                                                                                                                        |



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| <p>1 E. Weiner</p> <p>2 entire study period; is that correct? 10:29:36</p> <p>3 A. Yes. 10:29:37</p> <p>4 Q. So only one CSUGIE was suffered 10:29:38</p> <p>5 in the diclofenac group after six months 10:29:42</p> <p>6 of treatment; is that correct? 10:29:44</p> <p>7 A. Yes. 10:29:45</p> <p>8 Q. And next to that is the 10:29:45</p> <p>9 ibuprofen column and there were eleven 10:29:46</p> <p>10 CSUGIEs after six months of treatment; is 10:29:51</p> <p>11 that correct? 10:29:54</p> <p>12 A. Yes. 10:29:54</p> <p>13 Q. And there were still eleven 10:29:54</p> <p>14 CSUGIEs at the end of the entire study; is 10:29:56</p> <p>15 that correct? 10:29:59</p> <p>16 A. Yes. 10:29:59</p> <p>17 Q. So there were no CSUGIEs 10:29:59</p> <p>18 suffered after six months in the ibuprofen 10:30:00</p> <p>19 treatment group; is that correct? 10:30:02</p> <p>20 A. Yes. 10:30:04</p> <p>21 Q. So looking at that data with 10:30:04</p> <p>22 respect to uncensored CSUGIEs, it's 10:30:07</p> <p>23 accurate to state that six of the seven 10:30:10</p> <p>24 CSUGIEs that were suffered after six 10:30:12</p> <p>25 months occurred in the celecoxib treatment 10:30:13</p> <p>Page 70</p> | <p>1 E. Weiner</p> <p>2 group; is that correct? 10:30:16</p> <p>3 A. Yes. 10:30:17</p> <p>4 Again, that -- I imagine a lot 10:30:18</p> <p>5 of the report seeks to place that in 10:30:25</p> <p>6 context because there's a lot of other 10:30:27</p> <p>7 data that speaks to just more than crude 10:30:29</p> <p>8 events. 10:30:34</p> <p>9 Q. But six of the seven events that 10:30:34</p> <p>10 were being tested for under the 10:30:35</p> <p>11 traditional definition that occurred after 10:30:37</p> <p>12 six months occurred in the celecoxib 10:30:39</p> <p>13 treatment group; is that correct, sir? 10:30:42</p> <p>14 A. Yes, that's correct. 10:30:44</p> <p>15 Q. Now moving to the columns for P 10:30:45</p> <p>16 values for celecoxib which is the right 10:30:48</p> <p>17 side of both tables. 10:30:51</p> <p>18 Do you see that? 10:30:52</p> <p>19 A. Yes. 10:30:53</p> <p>20 Q. What does that mean? 10:30:55</p> <p>21 A. So that's the statistical 10:30:56</p> <p>22 significance of the difference between the 10:30:59</p> <p>23 rate for celecoxib versus either 10:31:03</p> <p>24 diclofenac, ibuprofen, for the 10:31:06</p> <p>25 combination. 10:31:10</p> <p>Page 71</p> |
| <p>1 E. Weiner</p> <p>2 Q. And in the combination 10:31:11</p> <p>3 comparison for non-aspirin users, there's 10:31:15</p> <p>4 a statistically significant P value after 10:31:18</p> <p>5 six months of drug use; is that correct? 10:31:21</p> <p>6 For non-aspirin users. 10:31:23</p> <p>7 A. That is correct. 10:31:26</p> <p>8 Q. And that finding of statistical 10:31:26</p> <p>9 significance does not hold for the entire 10:31:28</p> <p>10 study period; is that correct? 10:31:30</p> <p>11 MR. WEISS: I object to the form 10:31:32</p> <p>12 of the question. 10:31:33</p> <p>13 A. Yes. 10:31:35</p> <p>14 Q. And that's because the P value 10:31:37</p> <p>15 increases above .05 by the end of the 10:31:39</p> <p>16 study for that comparison? 10:31:44</p> <p>17 A. That's correct. 10:31:44</p> <p>18 Q. Turning to the next page of the 10:31:44</p> <p>19 document which is page six of two hundred 10:31:48</p> <p>20 thirteen. 10:31:51</p> <p>21 Are you with me? 10:31:51</p> <p>22 A. Yes. 10:31:52</p> <p>23 Q. And table three reports summary 10:31:53</p> <p>24 of CSUGIEs/GDU incident first six months; 10:31:55</p> <p>25 is that correct? 10:32:01</p> <p>Page 72</p>      | <p>1 E. Weiner</p> <p>2 A. Yes. 10:32:01</p> <p>3 Q. And what is that, CSUGIE/GDU? 10:32:01</p> <p>4 A. That's an endpoint that looks at 10:32:06</p> <p>5 the previous endpoint plus symptomatic 10:32:09</p> <p>6 ulcers. 10:32:12</p> <p>7 Q. And that was not the primary 10:32:12</p> <p>8 endpoint of the CLASS trial; correct? 10:32:13</p> <p>9 A. That's correct. 10:32:13</p> <p>10 Q. And it was not prespecified as a 10:32:14</p> <p>11 primary endpoint in the protocol? 10:32:16</p> <p>12 A. It was not prespecified as a 10:32:17</p> <p>13 primary endpoint. 10:32:20</p> <p>14 Q. And we had some disagreement 10:32:20</p> <p>15 earlier about whether it was going to be 10:32:22</p> <p>16 categorized or summarized or analyzed; is 10:32:24</p> <p>17 that correct? 10:32:28</p> <p>18 A. That's correct. 10:32:28</p> <p>19 Q. But it certainly was not the 10:32:29</p> <p>20 primary endpoint of the study? 10:32:31</p> <p>21 A. No. 10:32:32</p> <p>22 Q. And the study was not powered to 10:32:35</p> <p>23 test for a combination of CSUGIEs/GDUs; is 10:32:36</p> <p>24 that correct? 10:32:38</p> <p>25 A. It was powered on the primary 10:32:38</p> <p>Page 73</p>                 |

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| <p>1 E. Weiner</p> <p>2 endpoint, that's correct. 10:32:40</p> <p>3 Q. And do you recall that Merck 10:32:41</p> <p>4 went through the VIGOR trial with its 10:32:45</p> <p>5 COX-2 inhibitor Vioxx around the same time 10:32:48</p> <p>6 frame? 10:32:48</p> <p>7 A. Yes. 10:32:48</p> <p>8 Q. And do you recall what the 10:32:48</p> <p>9 primary endpoint of their study was? 10:32:49</p> <p>10 A. It was very similar to what this 10:32:53</p> <p>11 endpoint is, which is a combination of 10:32:56</p> <p>12 complicated and symptomatic ulcers. 10:32:58</p> <p>13 Q. And did you participate in the 10:32:58</p> <p>14 decision when the protocol was being 10:33:01</p> <p>15 drafted to use complicated ulcers as 10:33:03</p> <p>16 opposed to this combined endpoint as the 10:33:06</p> <p>17 primary endpoint for CLASS? 10:33:08</p> <p>18 A. I was consulted, so yes. 10:33:09</p> <p>19 Q. And why was the other endpoint 10:33:11</p> <p>20 chosen? 10:33:13</p> <p>21 A. The other -- I think the other 10:33:17</p> <p>22 endpoint was chosen because it was felt to 10:33:19</p> <p>23 be the most severe possible endpoint that 10:33:25</p> <p>24 one could choose. I think there was a lot 10:33:28</p> <p>25 of thought given to both, they were both 10:33:31</p> <p style="text-align: right;">Page 74</p> | <p>1 E. Weiner</p> <p>2 felt to be clinically meaningful. Merck 10:33:33</p> <p>3 went in one direction. I think it was 10:33:37</p> <p>4 also felt that probably it would make the 10:33:40</p> <p>5 regulatory path forward with FDA somewhat 10:33:44</p> <p>6 smoother using the more severe of the two 10:33:49</p> <p>7 endpoints. 10:33:52</p> <p>8 Q. And Vioxx Celebrex's main 10:33:53</p> <p>9 competitor for this type of drug? 10:33:56</p> <p>10 A. At this time, yes. 10:33:58</p> <p>11 Q. And one reason to pick the more 10:33:58</p> <p>12 difficult endpoint to try and distinguish 10:33:59</p> <p>13 the drug from Vioxx? 10:34:01</p> <p>14 A. I don't think that would have 10:34:05</p> <p>15 entered into it. Again, I'm trying to 10:34:07</p> <p>16 reconstruct all this. If only because of 10:34:10</p> <p>17 Vioxx could have subselected that endpoint 10:34:13</p> <p>18 out and presented that as one of their 10:34:17</p> <p>19 secondary analyses. I do not recall -- 10:34:20</p> <p>20 and at least the discussions I was in -- 10:34:27</p> <p>21 what Merck was doing as being a major 10:34:29</p> <p>22 factor. 10:34:32</p> <p>23 Q. Why did the FDA allow Merck to 10:34:32</p> <p>24 use this combined endpoint as their 10:34:36</p> <p>25 primary endpoint in VIGOR and suggested 10:34:37</p> <p style="text-align: right;">Page 75</p> |
| <p>1 E. Weiner</p> <p>2 that Pfizer and Searle needed to use the 10:34:41</p> <p>3 complicated ulcer endpoint for CLASS? 10:34:48</p> <p>4 MR. WEISS: I object to the form 10:34:48</p> <p>5 of the question. Lacks foundation. 10:34:48</p> <p>6 Assumes facts not in evidence. 10:34:52</p> <p>7 A. It's a really good question to 10:34:53</p> <p>8 which I wish I knew the answer. I just 10:34:55</p> <p>9 don't know. 10:34:59</p> <p>10 Q. Did you participate in any 10:35:00</p> <p>11 discussions with the FDA regarding what 10:35:01</p> <p>12 endpoint was going to be used in the CLASS 10:35:04</p> <p>13 protocol? 10:35:07</p> <p>14 A. I did not directly participate 10:35:07</p> <p>15 in those. I was sent reports of those 10:35:10</p> <p>16 discussions. 10:35:13</p> <p>17 Q. At the operations committee 10:35:15</p> <p>18 meeting did you often discuss or discuss 10:35:17</p> <p>19 Celebrex commercially and/or medically 10:35:23</p> <p>20 with Vioxx? 10:35:26</p> <p>21 MR. WEISS: I object to the form 10:35:27</p> <p>22 of the question. 10:35:28</p> <p>23 A. In some context or other that 10:35:28</p> <p>24 occurred fairly frequently. 10:35:30</p> <p>25 Q. Now turning your attention back 10:35:35</p> <p style="text-align: right;">Page 76</p>                                            | <p>1 E. Weiner</p> <p>2 specifically to tables three and four on 10:35:37</p> <p>3 page six of Exhibit 115, there are -- the 10:35:40</p> <p>4 first table is comparing both all patients 10:35:51</p> <p>5 for this combined endpoint at six months 10:35:54</p> <p>6 and then also patients not taking aspirin 10:35:57</p> <p>7 at six months; is that correct? 10:36:00</p> <p>8 A. Yes. 10:36:01</p> <p>9 Q. And then the second table is 10:36:01</p> <p>10 comparing the combined endpoint for both 10:36:04</p> <p>11 all patients and patients not taking 10:36:04</p> <p>12 aspirin for the entire study; is that 10:36:10</p> <p>13 correct? 10:36:11</p> <p>14 A. Yes. 10:36:12</p> <p>15 Q. And the third column from the 10:36:12</p> <p>16 right moving inward lists the P values for 10:36:16</p> <p>17 diclofenac; is that correct? 10:36:19</p> <p>18 A. Yes. 10:36:20</p> <p>19 Q. And that was one of the two 10:36:20</p> <p>20 comparators that Celebrex was being 10:36:22</p> <p>21 compared to as part of CLASS; is that 10:36:26</p> <p>22 correct? 10:36:27</p> <p>23 A. Yes. 10:36:27</p> <p>24 Q. In looking at all the tables, 10:36:27</p> <p>25 tables one, two, three, and four comparing 10:36:32</p> <p style="text-align: right;">Page 77</p>                                                                                                        |

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| <p>1 E. Weiner<br/>2 celecoxib to diclofenac, not one of those 10:36:36<br/>3 eight comparisons are statistically 10:36:41<br/>4 significant; is that correct? 10:36:42<br/>5 A. Yes. 10:36:43<br/>6 Q. I want to turn your attention to 10:36:43<br/>7 page two -- I'm sorry, page one hundred 10:36:46<br/>8 forty-eight of Exhibit 115 and it's table 10:36:54<br/>9 8P, summary of CSUGIE incidents, alternate 10:37:00<br/>10 definition entire study period. 10:37:06<br/>11 Now, do you know why the FDA 10:37:17<br/>12 insisted on having an alternate definition 10:37:20<br/>13 of CSUGIE? 10:37:22<br/>14 MR. WEISS: I object to the form 10:37:24<br/>15 of the question. Assumes facts not in 10:37:25<br/>16 evidence. 10:37:27<br/>17 A. Again, I didn't participate 10:37:27<br/>18 directly in those discussions. I know 10:37:29<br/>19 that they asked for it. I think why they 10:37:31<br/>20 preferred their definition over the one 10:37:35<br/>21 that was offered I don't know. 10:37:37<br/>22 Q. In looking at table 8P, the 10:37:41<br/>23 event rate for celecoxib on the 10:37:45<br/>24 alternative definition of CSUGIE is .68 10:37:48<br/>25 percent; is that correct? 10:37:53</p> <p style="text-align: right;">Page 78</p> | <p>1 E. Weiner<br/>2 A. Yes. 10:37:53<br/>3 Q. And the event rate for 10:37:53<br/>4 diclofenac with respect to the alternative 10:37:57<br/>5 definition is .35 percent; is that 10:38:00<br/>6 correct? 10:38:02<br/>7 A. Yes. 10:38:02<br/>8 Q. So the celecoxib alternative 10:38:04<br/>9 definition of CSUGIE event rate is nearly 10:38:09<br/>10 double that of diclofenac, is that 10:38:13<br/>11 correct, according to table 8P? 10:38:15<br/>12 A. Yes, but again, that's the crude 10:38:21<br/>13 rate, it doesn't take censoring into 10:38:24<br/>14 account and doesn't take many of the other 10:38:27<br/>15 factors into account which again are 10:38:30<br/>16 discussed in the body of the study report. 10:38:34<br/>17 Q. Did you participate in any 10:38:35<br/>18 decision not to publicly reveal the 10:38:36<br/>19 differences between celecoxib and the 10:38:42<br/>20 other drugs on the alternative definition 10:38:44<br/>21 of CSUGIE? 10:38:47<br/>22 A. Those were -- well, I don't know 10:38:48<br/>23 that they were not -- they were publicly 10:38:53<br/>24 revealed as much as they are in the body 10:38:56<br/>25 of the advisory committee material which 10:38:59</p> <p style="text-align: right;">Page 79</p>                                                                                                                         |
| <p>1 E. Weiner<br/>2 was in the public domain. 10:39:02<br/>3 Q. And that went in the public 10:39:04<br/>4 domain on February 7, 2001; correct? 10:39:08<br/>5 A. Yes. 10:39:11<br/>6 Q. And that is approximately six 10:39:11<br/>7 months after the ACP presentation was made 10:39:13<br/>8 in April of 2000? 10:39:16<br/>9 A. Yes. 10:39:17<br/>10 Q. And that's several months after 10:39:17<br/>11 the JAMA article was published in 10:39:21<br/>12 September of 2000? 10:39:22<br/>13 A. Yes. But again, this was not 10:39:24<br/>14 one of the primary analyses to be done. 10:39:26<br/>15 And even in FDA's evaluations of the CLASS 10:39:28<br/>16 trial, they don't do any statistical 10:39:35<br/>17 inference testing on these numbers. 10:39:38<br/>18 Q. My question is to you prior to 10:39:41<br/>19 the submission to the FDA which was 10:39:44<br/>20 ultimately made public on February 7, 10:39:45<br/>21 2001, did you participate in any decisions 10:39:49<br/>22 not to communicate the information 10:39:50<br/>23 contained in table 8P publicly? 10:39:53<br/>24 MR. WEISS: I object to the form 10:39:56<br/>25 of the question. Asked and answered. 10:39:56</p> <p style="text-align: right;">Page 80</p>                | <p>1 E. Weiner<br/>2 A. There was no formal decision not 10:39:58<br/>3 to communicate those data. I think they 10:40:01<br/>4 were felt not to be as important as the 10:40:04<br/>5 major CSUGIE endpoint that was 10:40:08<br/>6 communicated and there was a whole -- I 10:40:12<br/>7 mean, this study report, which is what, an 10:40:15<br/>8 inch thick, is actually top level summary 10:40:18<br/>9 further supported by about five or six 10:40:22<br/>10 big, fat volumes. There's many, many 10:40:26<br/>11 analyses and data that are not presented 10:40:28<br/>12 when one has to pick and choose when one 10:40:30<br/>13 is going to present. And in terms of its 10:40:33<br/>14 scientific importance in the grand scheme 10:40:36<br/>15 of the various things that were presented, 10:40:38<br/>16 I think this was a fairly minor one. 10:40:40<br/>17 Q. The alternative definition of 10:40:43<br/>18 CSUGIE as defined by the FDA was one of 10:40:46<br/>19 the two primary endpoints of the CLASS 10:40:47<br/>20 trial; correct? 10:40:50<br/>21 A. But it was also one that was not 10:40:51<br/>22 tested if the first endpoint failed. 10:40:53<br/>23 Q. The alternative definition of 10:40:56<br/>24 CSUGIE was one of the two primary 10:40:58<br/>25 endpoints of the study; is that correct? 10:41:00</p> <p style="text-align: right;">Page 81</p> |

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| <p>1 E. Weiner<br/>2 A. That's correct, but as things 10:41:02<br/>3 came out in the study, I think it ended up 10:41:04<br/>4 being a fairly minor one. And even in the 10:41:06<br/>5 FDA's report, it's buried fairly deeply 10:41:09<br/>6 because I don't think they felt it 10:41:19<br/>7 contributed meaningfully to a different 10:41:19<br/>8 conclusion than what the major CSUGIE 10:41:19<br/>9 endpoint would lead one to think. 10:41:19<br/>10 Q. And the combination of CSUGIEs 10:41:23<br/>11 and GDUs, that was not a primary endpoint 10:41:24<br/>12 of the study; correct? 10:41:25<br/>13 A. That's correct. 10:41:25<br/>14 MR. WEISS: Asked and answered. 10:41:26<br/>15 MR. SAHAM: We need to take a 10:41:28<br/>16 break to change the tape now. 10:41:30<br/>17 THE VIDEOGRAPHER: Please stand 10:41:32<br/>18 by. 10:41:34<br/>19 We are going off the record. 10:41:34<br/>20 The time is 10:39 a.m. 10:41:35<br/>21 This is the end of tape one. 10:41:39<br/>22 (Whereupon a break was taken) 10:41:41<br/>23 THE VIDEOGRAPHER: We are back on 10:41:41<br/>24 the record. The time is 10:49 a.m. 10:51:44<br/>25 This is the beginning of tape 10:51:47</p> <p style="text-align: right;">Page 82</p> | <p>1 E. Weiner<br/>2 number two. 10:51:48<br/>3 Q. Dr. Weiner, you retired from 10:51:49<br/>4 Pfizer in 2009? 10:51:51<br/>5 A. Yes. 10:51:52<br/>6 Q. And what have you been doing 10:51:52<br/>7 since then? 10:51:55<br/>8 A. I did consulting for 10:51:55<br/>9 pharmaceutical companies. 10:51:57<br/>10 Q. Is one of those companies 10:51:58<br/>11 Pfizer? 10:51:59<br/>12 A. No. 10:51:59<br/>13 Q. What companies? 10:52:00<br/>14 A. Well, most of my clients 10:52:00<br/>15 consider that confidential information. I 10:52:04<br/>16 can tell you it's a range of large and 10:52:06<br/>17 small companies. 10:52:09<br/>18 Q. But no Pfizer? 10:52:09<br/>19 A. No. 10:52:10<br/>20 Q. Do you have any financial ties 10:52:11<br/>21 to Pfizer right now? 10:52:13<br/>22 A. Only those ties that a retiree 10:52:15<br/>23 has to a company that he worked at for 10:52:17<br/>24 twenty years, which is pension and things 10:52:21<br/>25 like that. 10:52:22</p> <p style="text-align: right;">Page 83</p>                                                                                                                                                                                                                                                                          |
| <p>1 E. Weiner<br/>2 Q. So you haven't received any 10:52:23<br/>3 consulting agreement recently with Pfizer? 10:52:24<br/>4 A. No. 10:52:26<br/>5 Q. I'd like to show you what's 10:52:26<br/>6 previously been marked as Plaintiff's 10:52:30<br/>7 Exhibit 67. 10:52:33<br/>8 Could you please take a look at 10:52:43<br/>9 that document. 10:52:46<br/>10 MR. SAHAM: For the record, 10:52:48<br/>11 Plaintiff's Exhibit 67 bears Bates 10:52:48<br/>12 numbers DEFS 00404977 through 980. 10:52:51<br/>13 And it's entitled New Findings 10:52:59<br/>14 Presented on Celebrex Safety and 10:53:01<br/>15 Tolerability From Long-Term Outcome 10:53:06<br/>16 Study of Eight Thousand Arthritis 10:53:08<br/>17 Patients, and it's dated April 17, 10:53:11<br/>18 2000. 10:53:14<br/>19 Q. I'd ask you if you recognize 10:53:15<br/>20 this document. 10:53:17<br/>21 A. Yes. 10:53:19<br/>22 Q. What is it? 10:53:20<br/>23 A. This was a press release that 10:53:21<br/>24 was issued by Pharmacia and Pfizer after 10:53:22<br/>25 -- about the results of the CLASS trial. 10:53:28</p> <p style="text-align: right;">Page 84</p>                                                                                            | <p>1 E. Weiner<br/>2 Q. And turning your attention to 10:53:29<br/>3 the second page of Exhibit 67, the third 10:53:34<br/>4 paragraph, the first sentence reads, "the 10:53:36<br/>5 study funded by Searle and Pfizer, Inc. 10:53:41<br/>6 found that Celebrex patients experienced 10:53:44<br/>7 significantly fewer symptomatic GI ulcers 10:53:49<br/>8 and ulcer complications compared with 10:53:52<br/>9 ibuprofen or diclofenac." 10:53:56<br/>10 That statement with respect to 10:53:58<br/>11 diclofenac itself is inaccurate; is that 10:54:02<br/>12 correct? 10:54:04<br/>13 A. I interpret that to be the 10:54:04<br/>14 combination of ibuprofen and diclofenac, 10:54:08<br/>15 which the comparative two end sets. And 10:54:11<br/>16 if one considers it versus the 10:54:15<br/>17 combination, which was again the primary 10:54:17<br/>18 analysis stipulated, then it was not -- 10:54:21<br/>19 then it's correct. 10:54:24<br/>20 Q. But you couldn't make that 10:54:25<br/>21 statement as to diclofenac alone? 10:54:27<br/>22 A. That's correct. I don't know 10:54:29<br/>23 that the press release does that though. 10:54:30<br/>24 I think that it does not. 10:54:33<br/>25 Q. So when you read "or," you're 10:54:34</p> <p style="text-align: right;">Page 85</p> |



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| <p>1 E. Weiner<br/>2 reading ibuprofen and diclofenac together? 10:54:38<br/>3 MR. WEISS: I object to the form 10:54:41<br/>4 of the question. 10:54:43<br/>5 A. Yes, that's how I read it. 10:54:44<br/>6 Q. And that's the way you would 10:54:46<br/>7 usually use the word "or?" 10:54:47<br/>8 MR. WEISS: I object to the form 10:54:47<br/>9 of the question. 10:54:48<br/>10 A. It's not the most precise usage, 10:54:50<br/>11 but that's the context I viewed that in. 10:54:54<br/>12 Q. Could somebody interpret that as 10:54:54<br/>13 saying that it had fewer symptomatic GI 10:54:56<br/>14 ulcers than ibuprofen or diclofenac? 10:55:01<br/>15 MR. WEISS: I object to the form 10:55:05<br/>16 of the question. 10:55:06<br/>17 A. Or meaning each one 10:55:06<br/>18 individually. 10:55:12<br/>19 Q. Correct. 10:55:12<br/>20 A. One could read it that way, I 10:55:13<br/>21 suppose. 10:55:15<br/>22 Q. And if you read it that way, the 10:55:15<br/>23 statement would be inaccurate? 10:55:17<br/>24 A. That's correct. But if you read 10:55:18<br/>25 it the other way, then it is not. So at 10:55:20</p> <p style="text-align: right;">Page 86</p>               | <p>1 E. Weiner<br/>2 worst it's ambiguous. 10:55:22<br/>3 (Whereupon, an e-mail dated 10:55:27<br/>4 March 1, 2001 was marked Plaintiff's 10:55:27<br/>5 Exhibit 165 for identification.) 10:55:28<br/>6 Q. I want to show you what I'm 10:55:28<br/>7 marking as Plaintiff's Exhibit Number 165. 10:55:30<br/>8 Could you please take a look at 10:55:46<br/>9 that document. 10:55:49<br/>10 MR. SAHAM: And for the record, 10:55:56<br/>11 Plaintiff's Exhibit 165 is a two-page 10:55:58<br/>12 document bearing Bates numbers 10:56:01<br/>13 DEFS 00028999 through 9000. And it's 10:56:05<br/>14 an e-mail chain, the top e-mail is 10:56:13<br/>15 from Ethan Weiner dated March 1, 2001 10:56:15<br/>16 to Lori Shafner. 10:56:18<br/>17 Q. Do you know who Lori Shafner is? 10:56:22<br/>18 A. Yes. She was one of the -- at 10:56:24<br/>19 the time I think the project manager for 10:56:29<br/>20 Pfizer's part of the COX-2 alliance. 10:56:31<br/>21 Q. And you would have sent this 10:56:34<br/>22 e-mail to her in the ordinary course of 10:56:35<br/>23 your employment at Pfizer? 10:56:38<br/>24 MR. WEISS: I object to the form 10:56:39<br/>25 of the question. 10:56:40</p> <p style="text-align: right;">Page 87</p> |
| <p>1 E. Weiner<br/>2 A. Yes. 10:56:40<br/>3 Q. In the first line of the e-mail 10:56:41<br/>4 you write, "everybody rejected the idea 10:56:44<br/>5 that the combined analysis meant 10:56:47<br/>6 anything." 10:56:50<br/>7 A. Let me just familiarize myself 10:56:50<br/>8 with the rest of the e-mail string. 10:56:53<br/>9 (Reviewing). 10:56:56<br/>10 And this postdates the advisory 10:56:57<br/>11 committee; is that correct? 10:57:06<br/>12 Q. It's dated March 1, 2001. 10:57:07<br/>13 A. The advisory committee -- 10:57:10<br/>14 Q. February 7. So it's 10:57:13<br/>15 approximately one month after the advisory 10:57:14<br/>16 committee. 10:57:17<br/>17 But my first question is just a 10:57:17<br/>18 very simple one. You wrote on March 1, 10:57:17<br/>19 2001, "everybody rejected the idea that 10:57:18<br/>20 the combined analysis meant anything;" is 10:57:21<br/>21 that correct, sir? 10:57:25<br/>22 A. Yes. I'm just trying to see 10:57:25<br/>23 what the combined referred to. 10:57:30<br/>24 Q. And the first bullet point under 10:57:38<br/>25 that you wrote, "for the chosen endpoint 10:57:38</p> <p style="text-align: right;">Page 88</p> | <p>1 E. Weiner<br/>2 we beat IBU only." 10:57:38<br/>3 That's referring to ibuprofen 10:57:40<br/>4 only; correct? 10:57:44<br/>5 A. Yes. 10:57:45<br/>6 Q. And for the tables we looked at 10:57:47<br/>7 earlier, celecoxib in the CLASS trial only 10:57:47<br/>8 beat ibuprofen, it did not beat 10:57:48<br/>9 diclofenac; correct? 10:57:49<br/>10 A. When one looked at the two 10:57:50<br/>11 separately, that's correct. 10:57:52<br/>12 Q. And you wrote on March 1, 2001 10:57:53<br/>13 that everybody rejected the idea that the 10:57:55<br/>14 combined analysis meant anything; is that 10:57:57<br/>15 correct, sir? 10:58:00<br/>16 A. Yes. 10:58:01<br/>17 Q. And you're referring to the 10:58:01<br/>18 combined analysis between celecoxib and 10:58:01<br/>19 the two pooled NSAIDs together; correct? 10:58:05<br/>20 A. I believe so. 10:58:09<br/>21 Q. And in the last line of your 10:58:10<br/>22 e-mail you wrote, "I am strongly opposed 10:58:14<br/>23 to say we beat the aggregated NSAIDs as 10:58:17<br/>24 well as IBU individually. It's 10:58:21<br/>25 misleading." 10:58:24</p> <p style="text-align: right;">Page 89</p>                                                                             |



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| <p>1 E. Weiner<br/>2 You wrote that; correct? 10:58:24<br/>3 A. Well, yes. And what I meant by 10:58:26<br/>4 that is if you say we beat the aggregated 10:58:29<br/>5 NSAIDs, that was in the analysis plan and 10:58:33<br/>6 we did, in fact, for many of those 10:58:35<br/>7 analyses even at the twelve-month time 10:58:38<br/>8 point. If you say we beat the combined 10:58:41<br/>9 NSAIDs and also, by the way, we beat 10:58:44<br/>10 ibuprofen without saying about diclofenac, 10:58:48<br/>11 then one would probably, if you look at 10:58:51<br/>12 the numbers, would be able to backfill but 10:58:53<br/>13 I felt it wouldn't -- if you're going to 10:58:55<br/>14 say that you beat ibuprofen individually, 10:58:58<br/>15 then you need to say that you didn't beat 10:59:01<br/>16 diclofenac individually. If you want to 10:59:04<br/>17 say you beat the aggregated NSAIDs which 10:59:06<br/>18 again was a primary analysis but I'm 10:59:09<br/>19 saying further above it it was not a 10:59:09<br/>20 particularly convincing one after the 10:59:12<br/>21 advisory committee. But if you want to 10:59:14<br/>22 say you beat the pooled, then that's okay 10:59:17<br/>23 because that was the primary analysis and 10:59:20<br/>24 that is, in fact, the case. 10:59:22<br/>25 Q. And celecoxib failed to beat the 10:59:23</p> <p style="text-align: right;">Page 90</p> | <p>1 E. Weiner<br/>2 pooled NSAIDs on either of the two primary 10:59:28<br/>3 outcome measures; correct? 10:59:31<br/>4 A. If you mean the CSUGIEs as 10:59:33<br/>5 defined by the protocol and also as 10:59:38<br/>6 defined by FDA or the two CSUGIE 10:59:41<br/>7 definitions, that's correct. However, it 10:59:44<br/>8 did beat pooled NSAIDs for CSUGIEs plus 10:59:46<br/>9 symptomatic ulcers at both six and twelve 10:59:51<br/>10 months for the pooled NSAIDs. 10:59:57<br/>11 Q. But it didn't beat it, the 10:59:58<br/>12 combined NSAIDs, for the primary outcome; 10:59:58<br/>13 correct? 11:00:02<br/>14 A. Not for CSUGIEs without 11:00:02<br/>15 uncomplicated ulcers. 11:00:05<br/>16 Q. Which was the primary endpoint 11:00:06<br/>17 of the trial; correct? 11:00:08<br/>18 A. Yes, it did not make the primary 11:00:09<br/>19 endpoint. And I think that fact was 11:00:11<br/>20 widely known from the very beginning. 11:00:13<br/>21 Q. Do you recall telling anybody 11:00:14<br/>22 else other than Lori Shafner that you were 11:00:30<br/>23 strongly opposed to say we beat the 11:00:34<br/>24 aggregated NSAIDs as well as IBU 11:00:36<br/>25 individually because it's misleading? 11:00:41</p> <p style="text-align: right;">Page 91</p> |
| <p>1 E. Weiner<br/>2 A. Again, I don't have an 11:00:43<br/>3 independent recollection. I can speculate 11:00:45<br/>4 that in the conduct of business I probably 11:00:47<br/>5 would have to Leland Loose and others. I 11:00:51<br/>6 probably would have said it at meetings 11:00:55<br/>7 with Pharmacia as well. 11:00:58<br/>8 Q. During the operations committee 11:01:00<br/>9 meetings? 11:01:01<br/>10 A. Among others, I would suppose. 11:01:02<br/>11 But again, I have no independent 11:01:04<br/>12 recollection. 11:01:07<br/>13 Q. Do you recall telling anyone 11:01:07<br/>14 else other than Lori Shafner that 11:01:08<br/>15 everybody rejected the idea that the 11:01:08<br/>16 combined analysis meant anything? 11:01:12<br/>17 A. I don't recall who I did or did 11:01:13<br/>18 not discuss the outcome of the advisory 11:01:16<br/>19 committee with. But I suspect for those I 11:01:19<br/>20 did discuss it probably had a similar 11:01:24<br/>21 opinion. 11:01:27<br/>22 Q. And that may have been discussed 11:01:27<br/>23 at the operations committee meetings? 11:01:29<br/>24 A. It may have been. 11:01:32<br/>25 Q. And those discussions would have 11:01:32</p> <p style="text-align: right;">Page 92</p>                                                                                                                                                       | <p>1 E. Weiner<br/>2 occurred in the ordinary course of your 11:01:34<br/>3 employment at Pfizer? 11:01:35<br/>4 MR. WEISS: I object to the form 11:01:36<br/>5 of the question. 11:01:37<br/>6 A. Yes. 11:01:37<br/>7 Q. And you understand when I'm 11:01:38<br/>8 asking you in the ordinary course of your 11:01:43<br/>9 employment, I mean when you were at work? 11:01:44<br/>10 A. Right. 11:01:48<br/>11 And again, I have to, this being 11:01:48<br/>12 ten years ago, somewhat guess at that. If 11:01:49<br/>13 I could remember everyone I talked to 11:01:50<br/>14 about everything, I'd probably be 11:01:53<br/>15 something different right now. 11:01:56<br/>16 Q. Right. 11:01:57<br/>17 But all I'm saying is that, when 11:01:57<br/>18 you're discussing Celebrex or these other 11:01:57<br/>19 issues, you're doing it as part of your 11:01:58<br/>20 job; correct? 11:02:00<br/>21 A. Yes. 11:02:00<br/>22 Q. I want to show you what I'm 11:02:05<br/>23 marking as Plaintiff's Exhibit 166. 11:02:07<br/>24 Actually, before I mark 11:02:21<br/>25 Exhibit 166, could you go back to 11:02:23</p> <p style="text-align: right;">Page 93</p>                                                                                                             |

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| <p>1 E. Weiner</p> <p>2 Exhibit 67, the press release. And again 11:02:26</p> <p>3 on the second page where we were looking 11:02:35</p> <p>4 before, the next sentence states, 11:02:36</p> <p>5 "Celebrex was also associated with 11:02:40</p> <p>6 numerically fewer ulcer complications than 11:02:42</p> <p>7 the NSAID comparators among all patients 11:02:45</p> <p>8 and sixty-four percent fewer of these 11:02:51</p> <p>9 serious events among non-aspirin users-a 11:02:53</p> <p>10 statistically significant difference." 11:02:59</p> <p>11 That statement is only accurate 11:03:01</p> <p>12 at six months; correct? 11:03:03</p> <p>13 A. For CSUGIEs among non-aspirin 11:03:04</p> <p>14 users, that's correct. And that was the 11:03:09</p> <p>15 analysis that very likely this was based 11:03:10</p> <p>16 on. 11:03:13</p> <p>17 Q. Because for the entire study it 11:03:13</p> <p>18 was no longer statistically significant at 11:03:16</p> <p>19 that comparison; correct? 11:03:19</p> <p>20 A. That's correct. 11:03:20</p> <p>21 Q. And if you look at the first 11:03:20</p> <p>22 page of Exhibit 67 under the bolded 11:03:21</p> <p>23 heading groundbreaking study reflects real 11:03:27</p> <p>24 world practice, it states, "the celecoxib 11:03:30</p> <p>25 long-term arthritis safety study, an 11:03:34</p> <p style="text-align: right;">Page 94</p>                                                                         | <p>1 E. Weiner</p> <p>2 approximately thirteen-month multi-center 11:03:41</p> <p>3 randomized double-blind outcomes trial of 11:03:41</p> <p>4 about eight thousand arthritis patients, 11:03:44</p> <p>5 fifty-three hundred with OA and two 11:03:47</p> <p>6 thousand two hundred with rheumatoid 11:03:50</p> <p>7 arthritis," paren, "RA," closed paren," 11:03:52</p> <p>8 was designed to mirror everyday clinical 11:03:55</p> <p>9 practice by enrolling a broad spectrum of 11:03:58</p> <p>10 patients including adult patients of all 11:04:04</p> <p>11 ages and disease severity in patients 11:04:06</p> <p>12 taking low dose aspirin for cardio 11:04:07</p> <p>13 protection." 11:04:10</p> <p>14 Do you see that? 11:04:10</p> <p>15 A. Yes. 11:04:12</p> <p>16 Q. And that indicates that the 11:04:12</p> <p>17 study was a thirteen-month study; correct? 11:04:13</p> <p>18 A. Yes. 11:04:16</p> <p>19 Q. It doesn't say it was a 11:04:16</p> <p>20 six-month study; correct? 11:04:19</p> <p>21 A. That's correct. 11:04:21</p> <p>22 Q. And it doesn't say that the data 11:04:21</p> <p>23 being discussed in this press release is 11:04:24</p> <p>24 only six months of the entire study; does 11:04:26</p> <p>25 it, sir? 11:04:28</p> <p style="text-align: right;">Page 95</p> |
| <p>1 E. Weiner</p> <p>2 A. No, and I think that's because 11:04:29</p> <p>3 that's a press release, it's an extremely 11:04:33</p> <p>4 high level document. I think at that 11:04:33</p> <p>5 point six-month data had been reviewed and 11:04:36</p> <p>6 felt to be the most scientifically valid. 11:04:42</p> <p>7 The reasons for that are laid out I think 11:04:42</p> <p>8 quite clearly in the FDA briefing book 11:04:45</p> <p>9 that is publicly disclosed several months 11:04:50</p> <p>10 after this breaking press release and goes 11:04:55</p> <p>11 into all the reasons for that. I think 11:04:59</p> <p>12 that's a hundred, one hundred fifty-page 11:05:01</p> <p>13 document, something of that order, 11:05:05</p> <p>14 obviously not suitable for a very high 11:05:06</p> <p>15 level one or two-page press release that 11:05:09</p> <p>16 is intended to give the big picture. 11:05:12</p> <p>17 Q. The fact that there was more 11:05:14</p> <p>18 than six months data and only six months 11:05:16</p> <p>19 was being used is not disclosed in 11:05:18</p> <p>20 Exhibit 67; is that correct? 11:05:21</p> <p>21 A. No, that's correct. 11:05:22</p> <p>22 Q. And the explanation that you're 11:05:23</p> <p>23 talking about that was publicly disclosed 11:05:26</p> <p>24 on February 7 at the advisory committee, 11:05:29</p> <p>25 that information is not referenced in 11:05:32</p> <p style="text-align: right;">Page 96</p> | <p>1 E. Weiner</p> <p>2 Exhibit 67; is it? 11:05:35</p> <p>3 A. Which would have been 11:05:36</p> <p>4 inappropriate for a press release. 11:05:37</p> <p>5 Q. And it's not referenced in the 11:05:39</p> <p>6 JAMA article either; is it? 11:05:41</p> <p>7 A. No. 11:05:42</p> <p>8 Q. So this whole informative 11:05:43</p> <p>9 censoring business is not discussed in the 11:05:45</p> <p>10 JAMA article; correct? 11:05:48</p> <p>11 A. That's correct. 11:05:49</p> <p>12 Q. And it's not discussed in 11:05:49</p> <p>13 Exhibit 67? 11:05:51</p> <p>14 A. Well, one wouldn't expect it to 11:05:51</p> <p>15 be discussed in a press release. 11:05:54</p> <p>16 Q. And it's not disclosed publicly 11:05:56</p> <p>17 until February 7, 2001; correct? 11:05:59</p> <p>18 MR. WEISS: I object to the form 11:05:59</p> <p>19 of the question. 11:06:02</p> <p>20 A. Yes. 11:06:03</p> <p>21 (Whereupon, an e-mail dated 11:06:03</p> <p>22 March 26, 2001 was marked 11:06:03</p> <p>23 Plaintiff's Exhibit 166 11:06:03</p> <p>24 for identification.) 11:06:03</p> <p>25 Q. I want to show you what I'm 11:06:08</p> <p style="text-align: right;">Page 97</p>                                                                                                                                  |

|                                                       |                                                        |
|-------------------------------------------------------|--------------------------------------------------------|
| 1 E. Weiner                                           | 1 E. Weiner                                            |
| 2 marking as Plaintiff's Exhibit 166. 11:06:10        | 2 attention specifically to page eight of 11:07:26     |
| 3 Could you please take a look at 11:06:25            | 3 the label. It says proposed label changes 11:07:33   |
| 4 one hundred sixty-six, Dr. Weiner. 11:06:28         | 4 on the right-hand column. 11:07:36                   |
| 5 MR. SAHAM: And for the record, 11:06:30             | 5 Are you with me? 11:07:45                            |
| 6 Exhibit 166 is a multiple page 11:06:31             | 6 A. Yes. 11:07:46                                     |
| 7 document bearing Bates numbers 11:06:35             | 7 Q. And it states next to I guess a 11:07:46          |
| 8 DEFS 01001151 through 1188. And the 11:06:38        | 8 circled one, it states, "the lower 11:07:48          |
| 9 first two pages are an e-mail from 11:06:49         | 9 instance of symptomatic GI ulcers and 11:07:50       |
| 10 Mona Wahba to Ethan Weiner dated 11:06:53          | 10 ulcer complications was seen predominantly 11:07:54 |
| 11 March 26, 2001 and it attaches the 11:06:58        | 11 in patients not taking aspirin," paren, 11:07:56    |
| 12 revised draft USPI for CLASS. 11:07:01             | 12 "sixty-four percent decrease celecoxib 11:07:59     |
| 13 Q. And I'd ask you if you recognize 11:07:06       | 13 versus ibuprofen P less than 0.001," 11:08:03       |
| 14 this document. 11:07:08                            | 14 closed paren. 11:08:09                              |
| 15 A. Yes. 11:07:08                                   | 15 Do you see that? 11:08:10                           |
| 16 Q. And what is it? 11:07:09                        | 16 A. Yes. 11:08:12                                    |
| 17 A. It's a cover e-mail attached to 11:07:09        | 17 Q. Could you turn back to 11:08:12                  |
| 18 a draft label. 11:07:14                            | 18 Exhibit 67, the second page of the press 11:08:14   |
| 19 Q. And you would have received this 11:07:16       | 19 release. And the sentence we were just 11:08:16     |
| 20 in the ordinary scope of your employment 11:07:19  | 20 talking about that reads "Celebrex was 11:08:26     |
| 21 at Pfizer? 11:07:21                                | 21 also associated with numerically fewer 11:08:30     |
| 22 MR. WEISS: I object to the form 11:07:22           | 22 ulcer complications than the NSAID 11:08:32         |
| 23 of the question. 11:07:23                          | 23 comparators among all patients and 11:08:34         |
| 24 A. Yes. 11:07:23                                   | 24 sixty-four percent fewer of these serious 11:08:38  |
| 25 Q. And I'd like to turn your 11:07:24              | 25 events among non-aspirin users-a 11:08:39           |
| Page 98                                               | Page 99                                                |
| 1 E. Weiner                                           | 1 E. Weiner                                            |
| 2 statistically significant difference." 11:08:41     | 2 determine where the sixty-four percent 11:09:47      |
| 3 Is the sixty-four percent in the 11:08:42           | 3 number came from in the press release? 11:09:49      |
| 4 press release the sixty-four percent being 11:08:46 | 4 A. If I had a lot of time and a 11:09:54             |
| 5 referenced here in the proposed label 11:08:48      | 5 calculator, perhaps. But I -- I mean, 11:10:00       |
| 6 change? 11:08:50                                    | 6 these tables are not presenting percent 11:10:01     |
| 7 A. Off the top of my head, I don't 11:08:50         | 7 reduction, they're just presenting raw 11:10:04      |
| 8 know. I would have to -- I don't know 11:08:55      | 8 numbers and statistical significance. So 11:10:06    |
| 9 where the sixty-four percent in the press 11:08:57  | 9 you'd have to look at all those ratios to 11:10:09   |
| 10 release is coming from. 11:09:01                   | 10 see if any of them were .64. 11:10:12               |
| 11 Q. If the press release is 11:09:03                | 11 Q. But the document I've marked as 11:10:15         |
| 12 referring to the same sixty-four percent, 11:09:05 | 12 Exhibit 166, the proposed label change, 11:10:17    |
| 13 would that be misleading? 11:09:07                 | 13 that is -- 11:10:20                                 |
| 14 MR. WEISS: I object to the form 11:09:08           | 14 A. That clearly identifies where 11:10:20           |
| 15 of the question. 11:09:09                          | 15 it's coming from. 11:10:22                          |
| 16 A. Well, if it were and it implies 11:09:09        | 16 Q. And it's talking about percent 11:10:23          |
| 17 that it's to both and it's only to 11:09:12        | 17 reduction; correct? 11:10:26                        |
| 18 ibuprofen, yes. Again, I do not know 11:09:15      | 18 A. Yes. 11:10:27                                    |
| 19 where the sixty-four percent in the press 11:09:17 | 19 Q. And it's percent reduction only 11:10:27         |
| 20 release came from. 11:09:19                        | 20 for ibuprofen; correct? 11:10:30                    |
| 21 Q. Turning back to Exhibit 115, 11:09:20           | 21 A. That's correct. 11:10:31                         |
| 22 which is the big final report, looking at 11:09:25 | 22 Q. So if that is the same number 11:10:32           |
| 23 pages five and six, the tables -- and 11:09:37     | 23 being used, that statement which implies 11:10:32   |
| 24 really, you could look anywhere -- do you 11:09:40 | 24 it's for both comparators together would 11:10:34   |
| 25 -- from looking at these tables, can you 11:09:44  | 25 be misleading; correct? 11:10:38                    |
| Page 100                                              | Page 101                                               |

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| <p>1 E. Weiner<br/>2 MR. WEISS: I object to the form 11:10:39<br/>3 of the question. 11:10:40<br/>4 A. I just want to re-read where 11:10:41<br/>5 that is in the press release again. 11:10:43<br/>6 Q. It's the third paragraph, second 11:10:45<br/>7 sentence of the second page on Exhibit 67. 11:10:47<br/>8 A. (Reviewing). 11:10:58<br/>9 Yes, if that sixty-four percent 11:10:58<br/>10 is the same, sixty-four percent, then 11:10:59<br/>11 you're right. 11:11:00<br/>12 Q. And how would you calculate the 11:11:01<br/>13 percentages using the tables that we were 11:11:03<br/>14 just referring to in Exhibit 115? 11:11:05<br/>15 A. Well, first of all, not being a 11:11:08<br/>16 statistician, I don't know that I would 11:11:15<br/>17 necessarily calculate that off of the raw 11:11:17<br/>18 rates. There are statistical models that 11:11:20<br/>19 -- and all those Kaplan-Meier curves which 11:11:22<br/>20 I'm sure you've seen many of at this point 11:11:26<br/>21 are based on a probability of an event 11:11:29<br/>22 happening at a certain period of time. 11:11:29<br/>23 It's more complex in the raw rate. It 11:11:32<br/>24 takes censoring into account and things 11:11:35<br/>25 like that. So I don't know that the 11:11:40<br/>Page 102</p> | <p>1 E. Weiner<br/>2 sixty-four percent was calculated off of 11:11:41<br/>3 the raw rates. 11:11:44<br/>4 If it was, and that's a big 11:11:45<br/>5 caveat, then one would look at the rate -- 11:11:47<br/>6 again whether crude or adjusted -- of 11:11:50<br/>7 events for a given time period on 11:11:54<br/>8 Celebrex, the rate of that same event on 11:12:01<br/>9 the comparator -- again, whether it's 11:12:03<br/>10 pooled or one of the NSAIDs or whatever -- 11:12:05<br/>11 and take the ratio. 11:12:08<br/>12 If you look at every ratio here 11:12:08<br/>13 and you don't find .64 though, as I said, 11:12:22<br/>14 I wouldn't be surprised because there are 11:12:22<br/>15 a lot of complex statistical functions 11:12:25<br/>16 that take place. 11:12:29<br/>17 Q. Well, looking at -- 11:12:32<br/>18 A. And that's true for all clinical 11:12:33<br/>19 trials. 11:12:37<br/>20 Q. Well, looking at Exhibit 166, 11:12:37<br/>21 the page -- I believe it was page eight 11:12:39<br/>22 that we were looking at, do you know how 11:12:41<br/>23 that number was calculated or what was 11:12:43<br/>24 used as the starting numbers to calculate 11:12:46<br/>25 that sixty-four percent decrease? 11:12:49<br/>Page 103</p> |
| <p>1 E. Weiner<br/>2 A. No. I don't know if it was the 11:12:51<br/>3 raw rates or whether it was for the 11:12:54<br/>4 Kaplan-Meier curve. 11:12:57<br/>5 Q. And would you use annualized 11:12:58<br/>6 rates to calculate the percentage? 11:13:02<br/>7 A. One could or one couldn't. It 11:13:07<br/>8 doesn't matter. If the time period was 11:13:11<br/>9 the same for the two treatments I used, I 11:13:13<br/>10 wouldn't. If it was different, the mean 11:13:15<br/>11 treatment duration was different between 11:13:15<br/>12 two treatment groups, then you have to 11:13:17<br/>13 normalize for that use and use an 11:13:18<br/>14 annualized trade, which again is why the 11:13:20<br/>15 crude numbers wouldn't give you that. 11:13:22<br/>16 (Whereupon, a document entitled 11:13:22<br/>17 U.S. Collaboration Agreement 11:13:22<br/>18 was marked Plaintiff's Exhibit 167 11:13:22<br/>19 for identification.) 11:13:29<br/>20 Q. I want to show you what I'm 11:13:29<br/>21 marking as Plaintiff's Exhibit 167. 11:13:31<br/>22 Could you please take a look at 11:13:46<br/>23 Plaintiff's Exhibit 167. 11:13:48<br/>24 MR. SAHAM: And for the record, 11:13:50<br/>25 Plaintiff's 167 is a multiple-page 11:13:54<br/>Page 104</p>                                 | <p>1 E. Weiner<br/>2 document dated February 18, 1998 11:13:57<br/>3 bearing Bates numbers DEFS 00509082 11:13:58<br/>4 through 9121. And it's the U.S. 11:14:03<br/>5 collaboration agreement, celecoxib. 11:14:07<br/>6 And it's an agreement between Pfizer 11:14:11<br/>7 and the Monsanto Company and GD 11:14:14<br/>8 Searle. 11:14:18<br/>9 Q. Do you recognize this document? 11:14:20<br/>10 A. Yes. 11:14:21<br/>11 Q. And what is it, in your words? 11:14:22<br/>12 A. This is one of a series of 11:14:23<br/>13 contracts between Pfizer and Searle 11:14:25<br/>14 regarding the alliance around celecoxib 11:14:29<br/>15 and valdecoxib. 11:14:33<br/>16 Q. This document, looking at the 11:14:35<br/>17 page thirty-five of the document, it's 11:14:41<br/>18 executed and signed by Henry A. McKinnell, 11:14:43<br/>19 executive vice president for Pfizer. 11:14:48<br/>20 A. At that point I guess he wasn't 11:14:51<br/>21 CEO yet. Okay. Yes. 11:14:53<br/>22 Q. And then it's executed on behalf 11:14:55<br/>23 of GD Searle and Company by Dr. Schutter? 11:14:59<br/>24 A. Rick De Schutter. 11:15:03<br/>25 Q. Do you know who he is? 11:15:06<br/>Page 105</p>                                                                 |



|          |                                           |          |          |                                            |          |
|----------|-------------------------------------------|----------|----------|--------------------------------------------|----------|
| 1        | E. Weiner                                 |          | 1        | E. Weiner                                  |          |
| 2        | A. I believe he was the CEO of            | 11:15:07 | 2        | statement; correct?                        | 11:16:11 |
| 3        | Searle at that time.                      | 11:15:09 | 3        | A. Yes.                                    | 11:16:11 |
| 4        | Q. And it's also executed in his          | 11:15:09 | 4        | Q. I'd also like to turn your              | 11:16:12 |
| 5        | name on behalf of Monsanto as well?       | 11:15:13 | 5        | attention to page twenty-eight of the      | 11:16:14 |
| 6        | A. Right, Searle a subsidiary of          | 11:15:13 | 6        | contract, 9.2, publications. The contract  | 11:16:16 |
| 7        | Monsanto.                                 | 11:15:19 | 7        | states, "subject to CCC approval, if       | 11:16:33 |
| 8        | Q. And this sets out contractually        | 11:15:19 | 8        | either party," paren, "the publishing      | 11:16:37 |
| 9        | some of the agreements between Pfizer and | 11:15:22 | 9        | party," closed paren, "desires to disclose | 11:16:41 |
| 10       | Searle?                                   | 11:15:24 | 10       | any new information," paren, "as defined   | 11:16:50 |
| 11       | A. Yes.                                   | 11:15:24 | 11       | in the global agreement," closed paren,    | 11:16:50 |
| 12       | Q. And turning to page thirty-three       | 11:15:24 | 12       | "in scientific journals, publications, or  | 11:16:50 |
| 13       | of the document, specifically 12.14,      | 11:15:31 | 13       | scientific presentation, the publishing    | 11:16:54 |
| 14       | publicity.                                | 11:15:35 | 14       | party shall provide the other party an     | 11:16:55 |
| 15       | Are you with me?                          | 11:15:45 | 15       | advanced copy of any proposed publication  | 11:16:58 |
| 16       | A. Yes.                                   | 11:15:46 | 16       | relating to the or new information prior   | 11:17:02 |
| 17       | Q. The contract states, "neither          | 11:15:46 | 17       | to submission for publication."            | 11:17:05 |
| 18       | party shall originate any news release or | 11:15:49 | 18       | The contract makes that                    | 11:17:08 |
| 19       | public announcement written or oral       | 11:15:53 | 19       | statement; correct?                        | 11:17:10 |
| 20       | relating to this agreement without the    | 11:15:54 | 20       | A. Yes.                                    | 11:17:10 |
| 21       | prior written approval of the other party | 11:15:57 | 21       | Q. And it was executed by both Dr.         | 11:17:11 |
| 22       | except as otherwise required by law. Such | 11:16:00 | 22       | McKinnell for Pfizer and Dr. Schutter for  | 11:17:14 |
| 23       | approval shall not be unreasonably        | 11:16:03 | 23       | Searle and Monsanto?                       | 11:17:17 |
| 24       | withheld."                                | 11:16:07 | 24       | A. Yes.                                    | 11:17:18 |
| 25       | The contract makes that                   | 11:16:07 | 25       | Q. I want to show you what's               | 11:17:51 |
| Page 106 |                                           |          | Page 107 |                                            |          |
| 1        | E. Weiner                                 |          | 1        | E. Weiner                                  |          |
| 2        | previously been marked as Wolf Exhibit    | 11:17:53 | 2        | former.                                    | 11:19:06 |
| 3        | Number 3.                                 | 11:17:59 | 3        | Q. Would you have reviewed                 | 11:19:07 |
| 4        | Could you please take a look at           | 11:18:10 | 4        | iterations of this article before it was   | 11:19:10 |
| 5        | that document.                            | 11:18:13 | 5        | published?                                 | 11:19:13 |
| 6        | MR. SAHAM: And for the record,            | 11:18:15 | 6        | MR. WEISS: I object to the form            | 11:19:13 |
| 7        | it's the September 13, 2000 JAMA,         | 11:18:16 | 7        | of the question. He just said he           | 11:19:15 |
| 8        | journal of the American Medical           | 11:18:22 | 8        | doesn't recall.                            | 11:19:16 |
| 9        | Association, article Entitled             | 11:18:24 | 9        | A. I don't recall doing it. I              | 11:19:17 |
| 10       | Gastrointestinal Toxicity With            | 11:18:27 | 10       | suspect others at Pfizer would have. I     | 11:19:20 |
| 11       | Celecoxib Versus Nonsteroidal             | 11:18:29 | 11       | was not on the publications subcommittee.  | 11:19:22 |
| 12       | Antiinflammatory Drugs For                | 11:18:34 | 12       | Q. Was that one of the                     | 11:19:25 |
| 13       | Osteoarthritis and Rheumatoid             | 11:18:36 | 13       | responsibilities of Dr. Loose?             | 11:19:27 |
| 14       | Arthritis, the CLASS Study, a             | 11:18:40 | 14       | A. It may well have been.                  | 11:19:28 |
| 15       | Randomized Control Trial.                 | 11:18:43 | 15       | Q. And he reported up to you?              | 11:19:31 |
| 16       | Q. And I'd ask you if you recognize       | 11:18:46 | 16       | A. Yes.                                    | 11:19:32 |
| 17       | this document.                            | 11:18:48 | 17       | Q. Looking at the front page of            | 11:19:32 |
| 18       | A. Yes.                                   | 11:18:49 | 18       | Wolf Exhibit 3, the main outcome measure   | 11:19:45 |
| 19       | Q. And did you see this document          | 11:18:49 | 19       | or main outcome measures, are you with me? | 11:19:49 |
| 20       | before it was submitted for publication?  | 11:18:52 | 20       | A. Yes.                                    | 11:19:53 |
| 21       | A. No, not that I recall.                 | 11:18:53 | 21       | Q. It states, "incidence of                | 11:19:53 |
| 22       | Q. Did you see it before it was           | 11:18:56 | 22       | prospectively defined symptomatic upper GI | 11:19:56 |
| 23       | published?                                | 11:18:59 | 23       | ulcers and ulcer complications," paren,    | 11:19:58 |
| 24       | A. Not that I recall either. I may        | 11:19:00 | 24       | "bleeding, perforation, and obstruction,"  | 11:20:01 |
| 25       | have, the latter. I don't think the       | 11:19:04 | 25       | closed paren, "and other adverse effects   | 11:20:04 |
| Page 108 |                                           |          | Page 109 |                                            |          |



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| <p>1 E. Weiner</p> <p>2 during the six-month treatment period." 11:20:07</p> <p>3 Do you see that? 11:20:09</p> <p>4 A. Yes. 11:20:11</p> <p>5 Q. Is it accurate that the main 11:20:11</p> <p>6 outcome measure is different than the 11:20:12</p> <p>7 primary outcome measures as defined in the 11:20:14</p> <p>8 protocol we looked at earlier? 11:20:17</p> <p>9 MR. WEISS: I object to the form 11:20:19</p> <p>10 of the question. 11:20:20</p> <p>11 A. Yes. 11:20:21</p> <p>12 Q. And in fact, what's being 11:20:21</p> <p>13 reported here as the main outcome measure 11:20:22</p> <p>14 is the combined measure of complicated 11:20:23</p> <p>15 ulcers and symptomatic ulcers together? 11:20:27</p> <p>16 A. That is correct. 11:20:30</p> <p>17 Q. And that was not a primary 11:20:30</p> <p>18 outcome measure of the CLASS trial; 11:20:33</p> <p>19 correct? 11:20:36</p> <p>20 A. Yes. 11:20:36</p> <p>21 Q. And it defines here the 11:20:36</p> <p>22 treatment period as being six months; 11:20:41</p> <p>23 correct? 11:20:43</p> <p>24 A. Yes. 11:20:43</p> <p>25 Q. It does not reveal to the reader 11:20:44</p> <p>Page 110</p>                                                                                                                        | <p>1 E. Weiner</p> <p>2 specifically that the treatment period 11:20:46</p> <p>3 defined in the protocol was fifty-two 11:20:50</p> <p>4 weeks; correct? 11:20:52</p> <p>5 A. No, but it does in the methods 11:20:53</p> <p>6 section go on to discuss that there were 11:20:55</p> <p>7 patients treated longer than six months. 11:20:58</p> <p>8 Q. But it doesn't say that the 11:21:01</p> <p>9 treatment period was, in fact, fifty-two 11:21:01</p> <p>10 weeks; correct? 11:21:05</p> <p>11 A. No, it doesn't. 11:21:05</p> <p>12 Q. And it doesn't disclose that six 11:21:07</p> <p>13 of the seven complicated ulcers suffered 11:21:09</p> <p>14 after the six months reported here were 11:21:12</p> <p>15 suffered in the celecoxib treatment group? 11:21:15</p> <p>16 A. No, it does not discuss anything 11:21:17</p> <p>17 that happened after six months. 11:21:19</p> <p>18 Q. And referring to page -- looking 11:21:21</p> <p>19 at the internal JAMA page numbers 1251. 11:21:30</p> <p>20 Are you with me? Figure two. 11:21:36</p> <p>21 The middle table is labeled B, patients 11:21:43</p> <p>22 not taking aspirin; correct? 11:21:45</p> <p>23 A. Yes. 11:21:45</p> <p>24 Q. And the left side of that 11:21:47</p> <p>25 reports says, "a statistically significant 11:21:48</p> <p>Page 111</p> |
| <p>1 E. Weiner</p> <p>2 result of .04 for patients not taking 11:21:50</p> <p>3 aspirin for complicated ulcers;" correct? 11:21:54</p> <p>4 A. That's correct. 11:21:59</p> <p>5 Q. And that level of statistical 11:21:59</p> <p>6 significance was not maintained for the 11:22:00</p> <p>7 entire study period; correct? 11:22:02</p> <p>8 A. That's correct. 11:22:04</p> <p>9 Q. And the informative censoring 11:22:04</p> <p>10 issue that we discussed earlier, that's 11:22:07</p> <p>11 not revealed or discussed in any way in 11:22:09</p> <p>12 the JAMA article which is Wolf Exhibit 3; 11:22:12</p> <p>13 correct? 11:22:15</p> <p>14 MR. WEISS: I object to the form 11:22:16</p> <p>15 of the question. 11:22:16</p> <p>16 A. It's not discussed. 11:22:17</p> <p>17 Q. I want to show you what I'm 11:22:26</p> <p>18 marking as Plaintiff's 168. No, I want to 11:22:28</p> <p>19 show you what's previously been marked as 11:22:34</p> <p>20 Plaintiff's Exhibit 131. 11:22:37</p> <p>21 A. Which one is that? 11:22:38</p> <p>22 Q. I haven't shown it to you yet. 11:22:40</p> <p>23 It was marked in a prior deposition. 11:22:43</p> <p>24 MR. SAHAM: Just to make it 11:22:58</p> <p>25 clear, I'm showing you now what's been 11:22:58</p> <p>Page 112</p> | <p>1 E. Weiner</p> <p>2 marked previously as Plaintiff's 11:22:58</p> <p>3 Exhibit 131. 11:22:58</p> <p>4 For the record, Plaintiff's 131 11:22:58</p> <p>5 is a two-page e-mail string bearing 11:23:00</p> <p>6 Bates numbers DEFS 02561540 11:23:02</p> <p>7 through 541. And the top e-mail 11:23:06</p> <p>8 starting from the top is from Kenneth 11:23:11</p> <p>9 Bahrt to Mitchell Gandelman and 11:23:14</p> <p>10 Elizabeth Kitsis dated January 10, 11:23:14</p> <p>11 2001. 11:23:14</p> <p>12 Q. Do you know who Kenneth Bahrt 11:23:20</p> <p>13 is? 11:23:21</p> <p>14 A. He was one of the medical 11:23:21</p> <p>15 affairs or medical marketing people who 11:23:23</p> <p>16 worked for Liz Kitsis at the time. 11:23:26</p> <p>17 Q. What was Liz Kitsis' title? 11:23:31</p> <p>18 A. Senior director maybe. I don't 11:23:34</p> <p>19 remember. 11:23:35</p> <p>20 Q. And just under that there's an 11:23:35</p> <p>21 e-mail from you to Mona Wahba, Lori 11:23:38</p> <p>22 Shafner, and a bunch of other folks. 11:23:40</p> <p>23 Do you see that? 11:23:42</p> <p>24 A. Yes. 11:23:43</p> <p>25 Q. And it's dated January 10, 2001? 11:23:43</p> <p>Page 113</p>                                                                                                                                  |

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| <p>1 E. Weiner</p> <p>2 A. Yes. 11:23:46</p> <p>3 Q. And it also cc's Leland Loose? 11:23:47</p> <p>4 A. Yes. 11:23:50</p> <p>5 Q. Would you have sent this e-mail 11:23:50</p> <p>6 in the ordinary scope of your employment 11:23:53</p> <p>7 at Pfizer? 11:23:54</p> <p>8 MR. WEISS: I object to the form 11:23:55</p> <p>9 of the question. 11:23:55</p> <p>10 A. Yes. 11:23:56</p> <p>11 Q. You sent it while you were at 11:23:56</p> <p>12 work? 11:23:59</p> <p>13 A. Yes. 11:24:07</p> <p>14 Q. And it's about work-related 11:24:07</p> <p>15 issues? 11:24:07</p> <p>16 A. That's correct. 11:24:07</p> <p>17 Q. And the last sentence of your 11:24:07</p> <p>18 e-mail to Dr. Wahba and Dr. Loose and 11:24:07</p> <p>19 others states, "certain things should be 11:24:07</p> <p>20 openly stated, not buried in the 11:24:11</p> <p>21 presentation, i.e., "bullet point, "we did 11:24:13</p> <p>22 not achieve our primary efficacy parameter 11:24:17</p> <p>23 but here's why the results are still 11:24:22</p> <p>24 good," bullet point, "we did not see any 11:24:25</p> <p>25 difference between celecoxib and NSAID 11:24:28</p> <p>Page 114</p>                                                                                                                                                                                                        | <p>1 E. Weiner</p> <p>2 after six months but here is why and here 11:24:30</p> <p>3 is why the initial six-month analysis is 11:24:34</p> <p>4 the critical one," and so on. 11:24:37</p> <p>5 Did you write that in the 11:24:40</p> <p>6 ordinary course of your employment on or 11:24:42</p> <p>7 about January 10, 2001? 11:24:44</p> <p>8 MR. WEISS: I object to the form 11:24:45</p> <p>9 of the question. 11:24:47</p> <p>10 A. Yes, I wrote that in reference 11:24:47</p> <p>11 to rehearsals that were being carried on 11:24:49</p> <p>12 or what are called mock advisory 11:24:51</p> <p>13 committees, which is a very common 11:24:53</p> <p>14 practice in the industry where those 11:24:55</p> <p>15 presenting at an advisory committee 11:24:58</p> <p>16 present to a panel of both inside and 11:25:00</p> <p>17 outside people to have their presentations 11:25:02</p> <p>18 critiqued. 11:25:06</p> <p>19 Q. And one thing you pointed out in 11:25:07</p> <p>20 the scope of these rehearsals is that 11:25:10</p> <p>21 certain things should not be buried in the 11:25:12</p> <p>22 presentation? 11:25:16</p> <p>23 A. That's correct. 11:25:16</p> <p>24 Q. Would you agree with respect to 11:25:16</p> <p>25 a journal article being submitted to a 11:25:17</p> <p>Page 115</p>                                                              |
| <p>1 E. Weiner</p> <p>2 peer-reviewed journal that you shouldn't 11:25:20</p> <p>3 bury things in the journal? 11:25:23</p> <p>4 MR. WEISS: I object to the form 11:25:25</p> <p>5 of the question. 11:25:27</p> <p>6 A. As a rule, yes. 11:25:27</p> <p>7 Q. Looking back at Wolf Exhibit 3, 11:25:29</p> <p>8 the JAMA article, would you agree with me 11:25:32</p> <p>9 that any possible disclosure that 11:25:35</p> <p>10 treatment was in addition to the, quote, 11:25:39</p> <p>11 six-month treatment period is buried in 11:25:42</p> <p>12 the JAMA article? 11:25:45</p> <p>13 A. It's certainly not obvious. I 11:25:47</p> <p>14 do think that the six months analysis was 11:25:51</p> <p>15 the most valid analysis. And I also think 11:25:55</p> <p>16 that the advisory committee is the most 11:25:59</p> <p>17 appropriate venue to present that and why 11:26:02</p> <p>18 it is. That said, it could have been made 11:26:04</p> <p>19 more clear in the article that it is one 11:26:09</p> <p>20 of several possibly analyses that the data 11:26:12</p> <p>21 would have supported. But I don't think 11:26:15</p> <p>22 anybody changed their view that that was 11:26:22</p> <p>23 the most scientifically valued and 11:26:25</p> <p>24 informative analysis. 11:26:27</p> <p>25 Q. So you as a physician in reading 11:26:28</p> <p>Page 116</p> | <p>1 E. Weiner</p> <p>2 the JAMA article, if you weren't privy to 11:26:30</p> <p>3 the information you were as a member of 11:26:34</p> <p>4 the operations committee, when you saw the 11:26:35</p> <p>5 main outcome measure listing the 11:26:37</p> <p>6 "six-month treatment period," you might 11:26:41</p> <p>7 have concluded that there was only six 11:26:41</p> <p>8 months of treatment; correct? 11:26:41</p> <p>9 MR. WEISS: I object to the form 11:26:43</p> <p>10 of the question. 11:26:43</p> <p>11 A. I would have read the methods 11:26:44</p> <p>12 section and I always do when I read 11:26:47</p> <p>13 journal articles, and so I would have seen 11:26:51</p> <p>14 that it says patients were seen in X, X, 11:26:53</p> <p>15 and X time periods up until six months 11:26:58</p> <p>16 after which they were seen, and that would 11:27:00</p> <p>17 have raised the question in my mind so 11:27:01</p> <p>18 what happened after that. And so I would 11:27:04</p> <p>19 have probably realized that the study went 11:27:08</p> <p>20 on for more than six months. 11:27:11</p> <p>21 Q. But you wouldn't have known that 11:27:13</p> <p>22 there was a fifty-two-week treatment 11:27:15</p> <p>23 period specified in the protocol; is that 11:27:17</p> <p>24 correct? 11:27:20</p> <p>25 A. That's correct. 11:27:20</p> <p>Page 117</p> |

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| <p>1 E. Weiner</p> <p>2 Q. And you wouldn't have known that 11:27:20</p> <p>3 six of the seven patients suffering an 11:27:21</p> <p>4 uncensored complicated ulcer were in the 11:27:21</p> <p>5 celecoxib group -- 11:27:24</p> <p>6 MR. SAHAM: Strike that. 11:27:25</p> <p>7 Q. You wouldn't have known that six 11:27:27</p> <p>8 of the seven patients who suffered a 11:27:29</p> <p>9 complicated ulcer after the six months 11:27:31</p> <p>10 discussed in paper were in the celecoxib 11:27:31</p> <p>11 group; correct? 11:27:34</p> <p>12 A. You're right, I'd have to read 11:27:34</p> <p>13 the briefing book. 11:27:36</p> <p>14 Q. Which didn't even become 11:27:37</p> <p>15 available until February 7, 2001; is that 11:27:39</p> <p>16 correct? 11:27:43</p> <p>17 A. That's correct. 11:27:43</p> <p>18 Q. The paper also -- I'm again, 11:27:49</p> <p>19 talking about the JAMA article, Wolf 11:27:51</p> <p>20 Exhibit 3, it buries that -- at best it 11:27:56</p> <p>21 buries the fact that the primary endpoint 11:27:59</p> <p>22 of the study wasn't met; correct? 11:28:02</p> <p>23 MR. WEISS: I object to the form 11:28:04</p> <p>24 of the question. 11:28:06</p> <p>25 A. I think, if I'm not mistaken, it 11:28:06</p> <p style="text-align: right;">Page 118</p>                                    | <p>1 E. Weiner</p> <p>2 does make clear -- if you look at 11:28:15</p> <p>3 annualized I think in figure two among all 11:28:24</p> <p>4 patients, it does show that the 11:28:30</p> <p>5 complicated ulcers, which is at the left 11:28:33</p> <p>6 panel I think of figure eight, is not 11:28:36</p> <p>7 significant at .09. 11:28:42</p> <p>8 Q. Right. 11:28:43</p> <p>9 But does it state anywhere in 11:28:44</p> <p>10 the journal that that measure was the 11:28:46</p> <p>11 primary endpoint of the CLASS trial? 11:28:47</p> <p>12 A. No. 11:28:52</p> <p>13 Q. The second bullet point that you 11:28:56</p> <p>14 say in your e-mail which is Exhibit 131 11:29:00</p> <p>15 which should not be buried is, "we did not 11:29:03</p> <p>16 see any difference between celecoxib and 11:29:07</p> <p>17 NSAID after six months but here is why and 11:29:09</p> <p>18 here is why the initial six-month analysis 11:29:12</p> <p>19 is the critical one," and so son. 11:29:15</p> <p>20 Are you referring there that the 11:29:17</p> <p>21 why, is that the informative censoring 11:29:17</p> <p>22 analysis? 11:29:20</p> <p>23 A. Yes. 11:29:20</p> <p>24 Q. And that of course is not 11:29:21</p> <p>25 disclosed in Wolf Exhibit 3; correct? 11:29:23</p> <p style="text-align: right;">Page 119</p>                                                                     |
| <p>1 E. Weiner</p> <p>2 A. Right, because you would have to 11:29:26</p> <p>3 talk about things beyond six months for 11:29:28</p> <p>4 that to come into play. 11:29:31</p> <p>5 Q. So a reader of the journal 11:29:31</p> <p>6 article would not know that the reason 11:29:34</p> <p>7 Pfizer and Pharmacia thought it best to 11:29:36</p> <p>8 report six months is because of this 11:29:38</p> <p>9 informative censoring bias; correct? 11:29:40</p> <p>10 A. That's correct. 11:29:42</p> <p>11 Q. So that wasn't subject to peer 11:29:42</p> <p>12 review as part of the submission of the 11:29:44</p> <p>13 JAMA article which is Wolf Exhibit 3; 11:29:47</p> <p>14 correct? 11:29:50</p> <p>15 A. That is correct. However, the 11:29:50</p> <p>16 peer reviewers again, reading the methods 11:29:52</p> <p>17 section, have the opportunity I think to 11:29:55</p> <p>18 inquire what happened after six months. 11:30:04</p> <p>19 Q. But they weren't given that 11:30:04</p> <p>20 information up front in a clear way; 11:30:05</p> <p>21 correct? 11:30:08</p> <p>22 MR. WEISS: I object to the form 11:30:08</p> <p>23 of the question. 11:30:09</p> <p>24 A. Well, again, I think the methods 11:30:09</p> <p>25 section -- they do have the opportunity to 11:30:11</p> <p style="text-align: right;">Page 120</p> | <p>1 E. Weiner</p> <p>2 ask questions. And I was not included on 11:30:13</p> <p>3 correspondence to and from the journal so 11:30:16</p> <p>4 I don't know if they asked or not or what 11:30:20</p> <p>5 they were told. But they do have the 11:30:23</p> <p>6 opportunity to ask for further data. 11:30:25</p> <p>7 Q. But as a Johns Hopkins trained 11:30:28</p> <p>8 medical doctor, would you have submitted 11:30:32</p> <p>9 the JAMA article in that form describing 11:30:33</p> <p>10 "the treatment period as six months?" 11:30:37</p> <p>11 MR. WEISS: I object to the form 11:30:39</p> <p>12 of the question. 11:30:40</p> <p>13 A. I think that's a highly 11:30:40</p> <p>14 hypothetical question. 11:30:43</p> <p>15 MR. WEISS: Just can we qualify, 11:30:45</p> <p>16 do you mean sitting here knowing what 11:30:48</p> <p>17 he knows today about the controversy 11:30:49</p> <p>18 that resulted or at the time? 11:30:52</p> <p>19 Q. Would you have done it if it was 11:30:55</p> <p>20 up to you, Dr. Weiner? Would you have 11:30:57</p> <p>21 submitted six months of the fifty-two-week 11:30:57</p> <p>22 trial without expressly stating that 11:31:00</p> <p>23 you're only putting in part of the data 11:31:04</p> <p>24 and explaining why? 11:31:07</p> <p>25 MR. WEISS: I object to the form 11:31:08</p> <p style="text-align: right;">Page 121</p> |

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| <p>1 E. Weiner<br/>2 of the question. 11:31:09<br/>3 A. It's difficult to answer with 11:31:10<br/>4 20/20 hindsight. I think today, no. Back 11:31:15<br/>5 then, if I were very convinced that the 11:31:17<br/>6 six-month data really was the only thing 11:31:20<br/>7 that was meaningful, I probably would have 11:31:23<br/>8 focused on that very intently. It's very 11:31:27<br/>9 difficult for me to say whether or not -- 11:31:31<br/>10 to second-guess the authors on what else 11:31:34<br/>11 could have been said after six months. 11:31:36<br/>12 Because I mean, if you look at the panel 11:31:41<br/>13 of authors, besides people from the 11:31:43<br/>14 company, there are a lot of well respected 11:31:45<br/>15 people from academia and I think they as 11:31:49<br/>16 well must have felt there was a lot of 11:31:52<br/>17 face validly to the six-month analysis. 11:31:55<br/>18 Q. The other authors were all being 11:31:56<br/>19 paid by Pfizer and/or Pharmacia or Searle; 11:31:57<br/>20 correct? 11:31:59<br/>21 A. Yes, that's correct. 11:31:59<br/>22 Q. And Dr. Wahba, who worked for 11:32:03<br/>23 you, didn't believe in the informative 11:32:05<br/>24 censoring bias; correct? 11:32:09<br/>25 MR. WEISS: I object to the form 11:32:11<br/>Page 122</p>                                             | <p>1 E. Weiner<br/>2 of the question. 11:32:12<br/>3 A. There was -- no, she didn't. 11:32:13<br/>4 And again, it was not my role to enforce 11:32:13<br/>5 orthodoxy but rather to actually encourage 11:32:15<br/>6 debate, which we did a lot of in preparing 11:32:18<br/>7 for the advisory committee. Personally, I 11:32:21<br/>8 found it fairly convincing. 11:32:24<br/>9 Q. Dr. Zwillich didn't find it 11:32:24<br/>10 convincing? 11:32:27<br/>11 A. Yes, I realize that as well. 11:32:27<br/>12 But Dr. Zwillich and I didn't agree on 11:32:27<br/>13 everything but we still respect each 11:32:29<br/>14 other's opinions. 11:32:32<br/>15 Q. The FDA ultimately didn't agree 11:32:33<br/>16 with the informative censoring bias 11:32:33<br/>17 either; correct? 11:32:37<br/>18 MR. WEISS: I object to the form 11:32:37<br/>19 of the question. 11:32:37<br/>20 A. That's true, they did not. 11:32:38<br/>21 Q. And ultimately, even before the 11:32:40<br/>22 February 7 committee meeting, the day 11:32:42<br/>23 before the companies jointly decided to 11:32:45<br/>24 not present the informative censoring 11:32:47<br/>25 argument to the FDA at the advisory 11:32:49<br/>Page 123</p>                                                                                                                                                    |
| <p>1 E. Weiner<br/>2 committee; correct? 11:32:50<br/>3 MR. WEISS: I object to the form 11:32:51<br/>4 of the question. Assumes facts not in 11:32:52<br/>5 evidence. Lack of foundation. 11:32:53<br/>6 A. Yes, and the reason for that I 11:32:54<br/>7 think was not -- well, there are two 11:32:56<br/>8 things. First of all, from a regulatory 11:32:59<br/>9 prospective, I think FDA will view things 11:33:01<br/>10 differently than what is considered 11:33:05<br/>11 scientifically valid. In other words, for 11:33:09<br/>12 labeling purposes there is a very high 11:33:12<br/>13 bar. That's why two convincing studies 11:33:14<br/>14 are required to get a drug approved in the 11:33:17<br/>15 first place, not just one. So whether or 11:33:20<br/>16 not they felt that there was any 11:33:22<br/>17 scientific merit to the informative 11:33:24<br/>18 censoring, if I were a regulator I'd 11:33:28<br/>19 probably say -- if I believed in the 11:33:32<br/>20 argument, I'd probably say, okay, that 11:33:34<br/>21 sounds pretty convincing, go out and do 11:33:34<br/>22 another study to show me that it's really 11:33:36<br/>23 true. Because the data you have, although 11:33:38<br/>24 it's plausible, neither prove nor disprove 11:33:42<br/>25 that that's going on and I need proof if 11:33:44<br/>Page 124</p> | <p>1 E. Weiner<br/>2 I'm going to put it in your label. 11:33:47<br/>3 So they were going to focus on 11:33:48<br/>4 the twelve-month data and I think in the 11:33:50<br/>5 company we felt that whether or not we 11:33:53<br/>6 believed in informative censoring -- I 11:33:58<br/>7 think the majority of people felt that 11:34:00<br/>8 argument had scientific validity but not 11:34:02<br/>9 everyone. If FDA was going to be 11:34:05<br/>10 discussing one set of data and we were 11:34:09<br/>11 discussing another set of data, then that 11:34:11<br/>12 leaves the committee with nothing -- 11:34:14<br/>13 nothing for them to weigh one thing 11:34:16<br/>14 against the other. It would have made for 11:34:18<br/>15 a very difficult and non-productive 11:34:20<br/>16 advisory committee which was neither in 11:34:23<br/>17 our interests nor the agency for that to 11:34:26<br/>18 happen. So I think as a matter of 11:34:29<br/>19 practicality, the agency came out very 11:34:32<br/>20 strongly that we're going to be talking 11:34:35<br/>21 about twelve-month data, your arguments 11:34:36<br/>22 about why six-month is important 11:34:42<br/>23 notwithstanding, just so you know where 11:34:42<br/>24 we're coming from. And I think we felt at 11:34:44<br/>25 that point it didn't -- it would not 11:34:49<br/>Page 125</p> |



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| <p>1 E. Weiner<br/>2 benefit anybody for us to keep focusing on 11:34:50<br/>3 six-month data under those circumstances. 11:34:53<br/>4 Q. It's accurate that the entire 11:34:56<br/>5 study data was less favorable to celecoxib 11:34:57<br/>6 than the six-month data; correct? 11:35:00<br/>7 MR. WEISS: I object to the form 11:35:02<br/>8 of the question. 11:35:03<br/>9 A. Subject to just on face value 11:35:03<br/>10 without trying to explain it, that's 11:35:07<br/>11 correct. 11:35:08<br/>12 Q. And there were other 11:35:08<br/>13 explanations that possibly explained the 11:35:10<br/>14 difference between six months and twelve 11:35:15<br/>15 months other than informative censoring; 11:35:18<br/>16 correct? 11:35:20<br/>17 A. Right. And again, neither could 11:35:20<br/>18 be proven -- none of them could be proven 11:35:23<br/>19 or disproven and it's a matter of opinion, 11:35:31<br/>20 I think, as to which people felt was the 11:35:31<br/>21 most plausible. 11:35:32<br/>22 Q. And one explanation was just 11:35:32<br/>23 that celecoxib over twelve months was not 11:35:35<br/>24 safer than the comparator NSAIDs; correct? 11:35:37<br/>25 A. Well, that explanation, a 11:35:40</p> <p style="text-align: right;">Page 126</p>                                                                                                          | <p>1 E. Weiner<br/>2 corollary of that would have to be that 11:35:42<br/>3 the ulcer rate for the other NSAIDs 11:35:44<br/>4 declines over time but that for celecoxib 11:35:50<br/>5 it remains constant over time. That would 11:35:53<br/>6 fly in the face of most of the previous 11:35:57<br/>7 literature which had found after an 11:36:00<br/>8 initial one or two months that there's 11:36:00<br/>9 what's called a constant hazard function. 11:36:07<br/>10 In other words, you risk getting an ulcer 11:36:08<br/>11 is the same over time that if I treat ten 11:36:11<br/>12 people for ten years or fifty people for 11:36:15<br/>13 two years, I'm going to see the same 11:36:17<br/>14 number of ulcers either way. So that 11:36:19<br/>15 argument has its own issues. The argument 11:36:23<br/>16 of informative censoring has its issues as 11:36:28<br/>17 well and is much -- and none of them can 11:36:32<br/>18 be proven or disproven. I think 11:36:35<br/>19 ultimately that's why FDA said we can't 11:36:38<br/>20 use six months or labeling because you 11:36:42<br/>21 can't prove or disprove that what happened 11:36:45<br/>22 in the second six months is informative 11:36:47<br/>23 censoring. 11:36:51<br/>24 Q. There was some literature or 11:36:51<br/>25 some trial evidence to suggest that with 11:36:54</p> <p style="text-align: right;">Page 127</p> |
| <p>1 E. Weiner<br/>2 respect to ibuprofen the ulcer rate was 11:36:56<br/>3 higher in the initial months than it was 11:37:00<br/>4 over time; is that correct? 11:37:03<br/>5 A. Yeah, but I think that was 11:37:04<br/>6 limited to one or two months and in at 11:37:07<br/>7 least the majority of the literature -- at 11:37:07<br/>8 least for most answers. I don't know 11:37:14<br/>9 specifically about ibuprofen. 11:37:14<br/>10 I think the other point is that 11:37:17<br/>11 within -- and the reason that I felt there 11:37:21<br/>12 was a lot of face validity to the 11:37:23<br/>13 informative censoring argument was that 11:37:26<br/>14 within the -- what's laid out in the 11:37:29<br/>15 briefing book, it points out that among 11:37:32<br/>16 those subjects in the CLASS study that had 11:37:35<br/>17 symptoms -- because they split it up into 11:37:39<br/>18 ulcer risk if you're over sixty-five, 11:37:43<br/>19 under sixty-five, if you took aspirin, 11:37:45<br/>20 didn't take aspirin. And one of the 11:37:49<br/>21 splits was symptoms versus no symptoms. 11:37:49<br/>22 And among those with symptoms the ulcer 11:37:51<br/>23 risk was higher than those without 11:37:54<br/>24 symptoms. Again, I don't recall the exact 11:37:56<br/>25 way that that was calculated but I do 11:38:00</p> <p style="text-align: right;">Page 128</p> | <p>1 E. Weiner<br/>2 recall reading that briefing book. 11:38:03<br/>3 So again, that, to my mind, gave 11:38:05<br/>4 some validity to the argument. So at the 11:38:09<br/>5 end of the day, I felt that was a 11:38:12<br/>6 plausible argument. It's probably the 11:38:13<br/>7 most plausible of any to explain what's 11:38:14<br/>8 going on. But certainly it was not one -- 11:38:15<br/>9 the data just don't support either proving 11:38:18<br/>10 or disproving it. 11:38:21<br/>11 Q. Okay. 11:38:22<br/>12 Now, you said there were some 11:38:23<br/>13 issues with the informative censoring 11:38:24<br/>14 hypothesis. 11:38:27<br/>15 What were those? 11:38:27<br/>16 A. Well, again I think the main 11:38:28<br/>17 thing is that you can't prove that 11:38:30<br/>18 something else wasn't going on. And how 11:38:32<br/>19 much informative censoring was taking 11:38:37<br/>20 place could not be quantified. That's 11:38:40<br/>21 sort of a guess, an estimate. Attempts 11:38:45<br/>22 were made in the briefing book to actually 11:38:48<br/>23 estimate what that effect would be, but 11:38:51<br/>24 that's very assumption-dependent. Again, 11:38:53<br/>25 it all gets back to the fact that the data 11:38:55</p> <p style="text-align: right;">Page 129</p>                                                                                                      |



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| <p>1 E. Weiner<br/>2 can't tell you for sure that that's going 11:38:59<br/>3 on and it can't tell you for sure that it 11:39:01<br/>4 isn't. Clearly something is going on 11:39:05<br/>5 inasmuch as the shape of those 11:39:06<br/>6 Kaplan-Meier curves is different between 11:39:07<br/>7 the NSAIDs and Celebrex, so something that 11:39:09<br/>8 could be random chance, that could be 11:39:12<br/>9 informative censoring, that could be 11:39:14<br/>10 something strange about COX-2 11:39:18<br/>11 pharmacology, and there are probably five 11:39:21<br/>12 or six other things that we could sit 11:39:23<br/>13 around and think about. But of the ideas 11:39:25<br/>14 that were kicked around, I still felt the 11:39:25<br/>15 most likely explanation for that was 11:39:30<br/>16 informative censoring. 11:39:32<br/>17 Q. But informative censoring wasn't 11:39:32<br/>18 put to the test in the JAMA article, 11:39:35<br/>19 wasn't put to the peer review test; 11:39:37<br/>20 correct? 11:39:40<br/>21 MR. WEISS: I object to the form 11:39:40<br/>22 of the question. 11:39:41<br/>23 A. Because it's something that 11:39:41<br/>24 applies primarily after the first six 11:39:43<br/>25 months of treatment and the article 11:39:46<br/>Page 130</p>                                                     | <p>1 E. Weiner<br/>2 focuses on the first six, there would have 11:39:48<br/>3 been no opportunity for it to have come 11:39:49<br/>4 up. 11:39:51<br/>5 Q. Well, wouldn't the opportunity 11:39:52<br/>6 have been we're given six months and 11:39:54<br/>7 here's the reasons why because there 11:39:56<br/>8 actually is more data, there's over two 11:39:58<br/>9 thousand patients who were treated for 11:39:58<br/>10 longer than six months but here's why 11:40:02<br/>11 we're using the six-month cutoff? 11:40:03<br/>12 A. And then it would have come up 11:40:05<br/>13 in debate just as it did in the advisory 11:40:07<br/>14 committee. 11:40:10<br/>15 Q. But it come out months earlier; 11:40:10<br/>16 correct? 11:40:14<br/>17 MR. WEISS: I object to the form 11:40:14<br/>18 of the question. 11:40:15<br/>19 A. If it had happened, it would 11:40:15<br/>20 have come out a couple of months sooner. 11:40:18<br/>21 Q. And physiologic adaptation is 11:40:20<br/>22 another explanation for why Celebrex was 11:40:22<br/>23 less beneficial at twelve months than it 11:40:24<br/>24 was at six months; correct? 11:40:26<br/>25 A. Right, you'd have to hypothesize 11:40:28<br/>Page 131</p>                                              |
| <p>1 E. Weiner<br/>2 that there's adaptation to NSAIDs but not 11:40:31<br/>3 adaptation to Celebrex. 11:40:31<br/>4 Q. And you were talking about the 11:40:33<br/>5 various comparisons that were made aspirin 11:40:34<br/>6 sometimes without just a little earlier. 11:40:38<br/>7 With respect to the aspirin 11:40:40<br/>8 comparisons, those were not prespecified 11:40:44<br/>9 in the protocol; correct? 11:40:48<br/>10 A. No, but there should have been a 11:40:49<br/>11 statistical analysis plan which I do not 11:40:52<br/>12 recall seeing or not seeing, for that 11:40:57<br/>13 matter, but there were I'm sure somewhere 11:40:59<br/>14 specified many other sub cuts of the data 11:41:02<br/>15 because it's standard practice in any 11:41:04<br/>16 large clinical trial to divide by all 11:41:06<br/>17 kinds of things: Race, age, oftentimes 11:41:11<br/>18 body mass index, certain aspects of 11:41:20<br/>19 medical history, abuse of key medications. 11:41:20<br/>20 So A, it probably is specified somewhere 11:41:23<br/>21 but even if not, it's standard practice. 11:41:27<br/>22 Q. Did you say earlier if you did 11:41:29<br/>23 twenty different analyses just at random, 11:41:32<br/>24 you'd expect one of them to be 11:41:35<br/>25 statistically significant? 11:41:38<br/>Page 132</p> | <p>1 E. Weiner<br/>2 A. That's with what the P value 11:41:39<br/>3 of .05 means. 11:41:42<br/>4 Q. So basically if, after 11:41:43<br/>5 unblinding, you had thirty-four different 11:41:47<br/>6 analyses of the CLASS data were done, 11:41:47<br/>7 would you expect at least one and maybe 11:41:48<br/>8 two of those to be statistically 11:41:50<br/>9 significant at random? 11:41:53<br/>10 MR. WEISS: I object to the form 11:41:54<br/>11 of the question. 11:41:54<br/>12 A. No, because the twenty would 11:41:55<br/>13 have to be independent of one another for 11:41:57<br/>14 that to apply. And these things are all 11:41:59<br/>15 interrelated. So complicated ulcers are a 11:42:02<br/>16 subset of uncomplicated ulcers. There 11:42:06<br/>17 seems to be a relationship, or at least 11:42:09<br/>18 evidence presented of that to symptoms. 11:42:11<br/>19 If you're looking at totally different 11:42:13<br/>20 things, blood loss, for instance, was one 11:42:16<br/>21 of the things that came up which also is 11:42:19<br/>22 related to GI bleeding, GI irritation, so 11:42:21<br/>23 they're all intertwined. 11:42:25<br/>24 If you're looking a twenty 11:42:25<br/>25 different labs, say I'm looking at 11:42:27<br/>Page 133</p> |

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| <p>1 E. Weiner<br/>2 hemoglobin and sodium and creatinine and, 11:42:30<br/>3 you know, they're all independent things. 11:42:34<br/>4 A change in one is not -- doesn't impact 11:42:38<br/>5 the other, then that rule would apply. 11:42:42<br/>6 Q. What's the role of multiplicity? 11:42:45<br/>7 A. Well, that's basically what 11:42:48<br/>8 you're trying to correct for is that, if 11:42:50<br/>9 you do enough comparisons, you will, by 11:42:52<br/>10 random chance, find one that is 11:42:58<br/>11 statistically significant. But again, 11:42:59<br/>12 they have to be independent things that 11:43:02<br/>13 are not affected by one another for that 11:43:03<br/>14 to work. 11:43:03<br/>15 Q. And is that, in fact, why 11:43:04<br/>16 scientists set out a prespecified protocol 11:43:07<br/>17 to help avoid falling afoul of the rule of 11:43:08<br/>18 multiplicity? 11:43:13<br/>19 MR. WEISS: I object to the form 11:43:14<br/>20 of the question. 11:43:15<br/>21 A. For normal statistical inference 11:43:15<br/>22 testing, yes. 11:43:19<br/>23 Q. And here the primary endpoint 11:43:20<br/>24 was the complicated ulcers; correct? 11:43:22<br/>25 A. Right. And so -- yeah, we 11:43:23</p> <p style="text-align: right;">Page 134</p>                                                                                | <p>1 E. Weiner<br/>2 acknowledge that the primary endpoint, as 11:43:26<br/>3 prespecified, was not net. But that 11:43:31<br/>4 doesn't detract from either the validity 11:43:34<br/>5 or affect the necessity of doing all these 11:43:34<br/>6 subanalyses and it's standard practice. 11:43:37<br/>7 It would actually be remiss with a large 11:43:40<br/>8 clinical trial database of this size not 11:43:45<br/>9 to do that. It's a disservice to the 11:43:48<br/>10 people that participated in the study. 11:43:50<br/>11 Q. But if you're going to publish 11:43:52<br/>12 data on that, don't you have to correct 11:43:56<br/>13 the P values or adjust the P values as a 11:43:57<br/>14 result of the fact that the study wasn't 11:43:57<br/>15 powered for those endpoints? 11:44:00<br/>16 A. I suspect that -- again, I did 11:44:02<br/>17 not do the statistical -- you'd need to 11:44:04<br/>18 talk to the statisticians. But I'm pretty 11:44:07<br/>19 sure that those corrections or adjustments 11:44:10<br/>20 were put into place. 11:44:13<br/>21 Q. So when the non-aspirin subgroup 11:44:14<br/>22 and the combined endpoint are referenced 11:44:18<br/>23 in the JAMA article, they're still using 11:44:20<br/>24 .05, correct, as the statistical 11:44:25<br/>25 significant -- 11:44:26</p> <p style="text-align: right;">Page 135</p>                                         |
| <p>1 E. Weiner<br/>2 A. Right, but you don't know how 11:44:26<br/>3 the statistical test -- I mean, there are 11:44:29<br/>4 many different statistical tests that you 11:44:29<br/>5 could use to get that .05 and there are 11:44:31<br/>6 actual analysis, co-variance models and 11:44:35<br/>7 other things that take into account 11:44:39<br/>8 multiplicity, they take into account 11:44:42<br/>9 differences between the populations, and 11:44:45<br/>10 many other factors. And again, all of 11:44:48<br/>11 those statistical tests as part of the FDA 11:44:51<br/>12 review they have a statistician that 11:44:55<br/>13 carefully reviews all of that stuff to be 11:44:58<br/>14 sure they would agree that that's the 11:45:01<br/>15 appropriate test and the appropriate 11:45:03<br/>16 adjustment for all of those things. 11:45:04<br/>17 Q. If those adjustments were not 11:45:06<br/>18 made as part of the data that is reported 11:45:08<br/>19 in Wolf Exhibit 3, figure two, would that 11:45:10<br/>20 data be misleading? 11:45:13<br/>21 MR. WEISS: I object to the form 11:45:15<br/>22 of the question. 11:45:15<br/>23 A. If the adjustments were not 11:45:16<br/>24 made? I think -- you know, I wouldn't 11:45:18<br/>25 know because that also is a matter of -- 11:45:24</p> <p style="text-align: right;">Page 136</p> | <p>1 E. Weiner<br/>2 I'm not a statistician so I can't tell you 11:45:27<br/>3 that. I would think that if you -- some 11:45:29<br/>4 people would accuse you if you make 11:45:33<br/>5 adjustments that you're doctoring the 11:45:35<br/>6 data, although that again is carefully 11:45:38<br/>7 reviewed by FDA and not all statisticians 11:45:42<br/>8 agree on things. If you don't make 11:45:44<br/>9 adjustments, others would feel that there 11:45:46<br/>10 might be confounding factors you're not 11:45:50<br/>11 taking into account, so there's no hard 11:45:54<br/>12 and fast rule. But in general adjustments 11:45:56<br/>13 are made, the statistical tests are fairly 11:45:58<br/>14 complex, and it's a source of fairly 11:46:01<br/>15 intense discussion between the sponsor and 11:46:03<br/>16 regulatory agencies about the most 11:46:06<br/>17 appropriate tests and how they're applied. 11:46:08<br/>18 Q. When you say it was reviewed by 11:46:09<br/>19 the FDA, Wolf Exhibit 3, the JAMA article, 11:46:11<br/>20 that wasn't reviewed by the FDA before it 11:46:15<br/>21 was submitted for publication? 11:46:18<br/>22 A. No, but presumably the same 11:46:18<br/>23 statistical analyses were used there as 11:46:19<br/>24 were used in what was submitted to FDA. 11:46:21<br/>25 Q. Looking back to Plaintiff's 11:46:25</p> <p style="text-align: right;">Page 137</p> |

1 E. Weiner  
2 Exhibit 131, the e-mail chain below the 11:46:28  
3 one we were just discussing that's from 11:46:32  
4 Mona Wahba to several individuals and 11:46:41  
5 you're cc'd on it on January 10, 2001. 11:46:41  
6 Do you see that? 11:46:42  
7 A. Yes. 11:46:43  
8 Q. And you would have received that 11:46:43  
9 in the ordinary scope of your employment? 11:46:45  
10 MR. WEISS: I object to the form 11:46:46  
11 of the question. 11:46:47  
12 A. Yes. 11:46:48  
13 Q. And Dr. Wahba writes about study 11:46:48  
14 design for the CLASS trial and the first 11:46:53  
15 thing she writes, "where is the entire 12M 11:46:55  
16 analysis for the primary secondary P 11:46:58  
17 values. Did the study meet its primary 11:47:01  
18 endpoint." 11:47:03  
19 Do you see that? 11:47:04  
20 A. Yes. 11:47:05  
21 Q. Do you know what she's referring 11:47:05  
22 to? 11:47:07  
23 A. She's probably referring to that 11:47:07  
24 draft presentation that was made at the 11:47:14  
25 mock advisory committee. Which again, the 11:47:16  
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1 E. Weiner  
2 six months? 11:48:13  
3 A. There's no regulatory definition 11:48:13  
4 of what long and short-term is. And 11:48:16  
5 again, I think this question has to be 11:48:21  
6 taken in the context of rehearsal for an 11:48:21  
7 advisory committee and that is one of the 11:48:23  
8 things that she is saying you need 11:48:25  
9 strength in your arguments to justify. 11:48:29  
10 Q. And do you recall there being 11:48:31  
11 some discussion or concern that if you 11:48:32  
12 only presented six months of data either 11:48:35  
13 in JAMA or to the FDA that you would be at 11:48:37  
14 risk of no longer having a long-term 11:48:40  
15 trial? 11:48:43  
16 A. Well, six months is not as long 11:48:43  
17 as a year; is it? So it certainly 11:48:45  
18 increases that risk. 11:48:49  
19 Q. Who other than Dr. Wahba 11:48:50  
20 expressed that position? 11:48:52  
21 A. I don't know. I don't know who 11:48:53  
22 said what back then. 11:48:57  
23 (Whereupon, an e-mail dated 11:48:57  
24 January 16, 2001 was marked 11:48:57  
25 Plaintiff's Exhibit 168 11:48:57  
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1 E. Weiner  
2 role of the people attending it is to 11:47:20  
3 savage the presenter even if you agree 11:47:24  
4 with them and to poke holes in all of 11:47:28  
5 their arguments, make sure that those 11:47:30  
6 arguments get shored up, and also make 11:47:33  
7 sure they can answer all types of 11:47:35  
8 questions the advisory panel will ask. 11:47:39  
9 Because the advisory panel's job, the real 11:47:41  
10 one, is to be sceptical as well. 11:47:45  
11 Q. And the second question is, "was 11:47:47  
12 the 6M analysis planned in the protocol;" 11:47:48  
13 correct? 11:47:48  
14 A. Yes. 11:47:48  
15 Q. And the answer to that is that 11:47:48  
16 it was not planned in the protocol; 11:47:51  
17 correct? 11:47:53  
18 A. That's correct. 11:47:53  
19 Q. Point five is, "how can you 11:47:54  
20 label CLASS as a long-term study if you 11:47:59  
21 are showing only 6M results." 11:48:01  
22 Do you see that? 11:48:05  
23 A. Yes. 11:48:06  
24 Q. How can you label CLASS as a 11:48:07  
25 long-term study if you're only reporting 11:48:10  
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1 E. Weiner  
2 for identification.) 11:49:06  
3 Q. I want to show you what I'm 11:49:06  
4 marking as Plaintiff's Exhibit 168. 11:49:08  
5 Could you please take a look at 11:49:30  
6 that document. 11:49:32  
7 MR. SAHAM: And for the record, 11:49:32  
8 Plaintiff's Exhibit 168 is a 11:49:33  
9 multiple-page document. The first 11:49:39  
10 page is an e-mail and it attaches what 11:49:40  
11 appear to be January 9 advisory 11:49:45  
12 committee rehearsal questions and 11:49:54  
13 comments. The entire document bears 11:49:56  
14 Bates numbers DEFS 00656588 11:50:01  
15 through 592 and it's from Olivia 11:50:07  
16 Coughlin to Ethan Weiner and others. 11:50:13  
17 Q. Do you know who Olivia Coughlin 11:50:16  
18 is? 11:50:19  
19 A. She was a project manager at 11:50:19  
20 Searle/Pharmacia. 11:50:22  
21 Q. For the Celebrex issue? 11:50:23  
22 A. Yes. 11:50:24  
23 Q. And you would have received this 11:50:25  
24 document from her on or about January 16, 11:50:27  
25 2001? 11:50:29  
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| <p>1 E. Weiner</p> <p>2 A. Yes. 11:50:29</p> <p>3 Q. And you would have received it 11:50:30</p> <p>4 in the ordinary scope of your employment 11:50:31</p> <p>5 at Pfizer? 11:50:33</p> <p>6 MR. WEISS: I object to the form 11:50:33</p> <p>7 of the question. 11:50:35</p> <p>8 A. Yes. 11:50:35</p> <p>9 Q. And she writes, "Fior tomorrow's 11:50:36</p> <p>10 rehearsal." 11:50:40</p> <p>11 A. That's probably a typo. 11:50:42</p> <p>12 Q. Yes, it's probably "for 11:50:45</p> <p>13 tomorrow's rehearsal," I think we could 11:50:45</p> <p>14 agree, "you had agreed to act in the role 11:50:45</p> <p>15 of advisory committee members in addition 11:50:47</p> <p>16 to some other consultants." 11:50:49</p> <p>17 Did you participate, as you 11:50:51</p> <p>18 testified earlier, in these rehearsals for 11:50:55</p> <p>19 the advisory committee meeting? 11:50:58</p> <p>20 A. Yes. 11:51:00</p> <p>21 Q. And you would have received this 11:51:01</p> <p>22 document as a part of that process? 11:51:03</p> <p>23 A. Yes. And again, our role was to 11:51:05</p> <p>24 tear apart everything that the presenter 11:51:08</p> <p>25 was doing, poke holes in it whether we 11:51:08</p> <p style="text-align: right;">Page 142</p>                                                                            | <p>1 E. Weiner</p> <p>2 believed it or not, to be as adversarial 11:51:12</p> <p>3 as we possibly could be and unreasonably 11:51:12</p> <p>4 so in order that they are well prepared 11:51:16</p> <p>5 and can answer all kinds of bizarre 11:51:19</p> <p>6 questions from left field. 11:51:23</p> <p>7 Q. And the second page of this 11:51:24</p> <p>8 rehearsal questions and comments, it's 11:51:25</p> <p>9 talking about diclofenac; is that correct? 11:51:26</p> <p>10 A. Yes. 11:51:31</p> <p>11 Q. And then the fourth question 11:51:32</p> <p>12 down it says, "diclofenac is as safe as 11:51:34</p> <p>13 celecoxib in regards to ulcer complication 11:51:38</p> <p>14 or is this a failed study." 11:51:42</p> <p>15 That's what it says; correct? 11:51:43</p> <p>16 A. Yes. 11:51:45</p> <p>17 Q. And if you just go by the entire 11:51:45</p> <p>18 study results of CLASS -- 11:51:48</p> <p>19 MR. SAHAM: Strike that. 11:51:49</p> <p>20 Q. If you look at the results of 11:51:50</p> <p>21 CLASS, diclofenac and celecoxib are no 11:51:51</p> <p>22 different with respect to any of the eight 11:51:55</p> <p>23 measures addressed in Exhibit 115, the 11:51:57</p> <p>24 final report; correct? 11:52:01</p> <p>25 A. Yes. 11:52:02</p> <p style="text-align: right;">Page 143</p> |
| <p>1 E. Weiner</p> <p>2 Q. So that statement is accurate if 11:52:02</p> <p>3 you only go with the CLASS data, correct, 11:52:05</p> <p>4 that diclofenac is as safe as celecoxib? 11:52:08</p> <p>5 A. It's not so much a statement as 11:52:13</p> <p>6 to challenging the presenter to say why 11:52:15</p> <p>7 isn't this the case. 11:52:17</p> <p>8 Q. But CLASS showed that the two 11:52:17</p> <p>9 were comparable in any of the GI measures 11:52:19</p> <p>10 looked at; correct? 11:52:23</p> <p>11 A. Yes. 11:52:24</p> <p>12 Q. So either they're as safe or 11:52:24</p> <p>13 it's a failed study, according to this 11:52:27</p> <p>14 question; correct? 11:52:29</p> <p>15 A. Well, then -- the point is that 11:52:29</p> <p>16 the presenter needs to try to address 11:52:33</p> <p>17 those issues and I think that the way that 11:52:35</p> <p>18 they would do that or did do that was 11:52:38</p> <p>19 again to look at confounders, look at 11:52:50</p> <p>20 informative censoring, and assess the role 11:52:50</p> <p>21 of all that. 11:52:50</p> <p>22 Q. And a potential question of that 11:52:50</p> <p>23 is how do you know that the people who 11:52:52</p> <p>24 dropped out would have gotten ulcers; 11:52:54</p> <p>25 correct? 11:52:56</p> <p style="text-align: right;">Page 144</p> | <p>1 E. Weiner</p> <p>2 A. Yes, that's correct. 11:52:56</p> <p>3 Q. And there was no proof or 11:52:58</p> <p>4 evidence that could be used to make that 11:52:59</p> <p>5 determination at that time? 11:53:02</p> <p>6 A. Yes, we talked about that 11:53:03</p> <p>7 previously. 11:53:04</p> <p>8 Q. So there was no scientific 11:53:04</p> <p>9 evidence that could establish that 11:53:07</p> <p>10 informative censoring was at work here; 11:53:08</p> <p>11 correct? 11:53:09</p> <p>12 MR. WEISS: I object to the form 11:53:09</p> <p>13 of the question. 11:53:10</p> <p>14 A. Right, and there's no evidence 11:53:10</p> <p>15 that could rule that out. 11:53:13</p> <p>16 Again, as I said, many of us 11:53:14</p> <p>17 believed that to be the most plausible 11:53:15</p> <p>18 explanation. 11:53:18</p> <p>19 Q. And it was also an explanation 11:53:19</p> <p>20 that would be favorable to Celebrex out in 11:53:21</p> <p>21 the marketplace; correct? 11:53:25</p> <p>22 A. Yes. Again, I think what we 11:53:25</p> <p>23 were trying to do, at least in the R&amp;D 11:53:31</p> <p>24 part of things, was to try and understand 11:53:33</p> <p>25 what was going on and figure out what we 11:53:36</p> <p style="text-align: right;">Page 145</p>                                |



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| <p>1 E. Weiner<br/>2 -- again, we talked about what the various 11:53:39<br/>3 explanations were and to many of us we 11:53:42<br/>4 felt that this still best explains the 11:53:47<br/>5 data. It could not be proven but -- and 11:53:49<br/>6 that was one of the flaws of the database, 11:53:52<br/>7 I suppose. But we still felt it was the 11:53:54<br/>8 most plausible explanation. 11:53:58<br/>9 Q. But Pfizer's in the business of 11:54:00<br/>10 selling drugs; correct? 11:54:03<br/>11 A. Yes. 11:54:04<br/>12 Q. The more drugs they sell, the 11:54:04<br/>13 more money Pfizer makes; correct? 11:54:06<br/>14 A. Yes. 11:54:08<br/>15 Q. And the more Celebrex that would 11:54:08<br/>16 be sold, the better it would be for 11:54:08<br/>17 Pfizer; correct? 11:54:10<br/>18 A. Yes. 11:54:10<br/>19 Q. So it would be better for Pfizer 11:54:10<br/>20 if the six-month data that was more 11:54:12<br/>21 favorable to Celebrex could be used as 11:54:14<br/>22 opposed to the entire study data; correct? 11:54:18<br/>23 A. Yes, but I think you stressed 11:54:22<br/>24 could be used, so is there validity for 11:54:25<br/>25 using it, and I think we felt that there 11:54:26</p> <p style="text-align: right;">Page 146</p>                                 | <p>1 E. Weiner<br/>2 was based on the good arguments as to why 11:54:28<br/>3 those data were useful and informative 11:54:30<br/>4 data. 11:54:33<br/>5 Q. Now looking down to study design 11:54:36<br/>6 which is just on the first page of the 11:54:41<br/>7 January 9 advisory committee rehearsal 11:54:44<br/>8 questions and comments, under study design 11:54:48<br/>9 it says, "two separate studies analyzed 11:54:51<br/>10 together: Make that clear." 11:54:54<br/>11 The journal article did not make 11:54:56<br/>12 that clear; did it? 11:55:00<br/>13 A. No. But again, I think that 11:55:01<br/>14 what the aim -- originally it was going to 11:55:05<br/>15 be one study. It was split into two 11:55:08<br/>16 studies largely if not exclusively for 11:55:11<br/>17 reasons of practicality; that one trying 11:55:15<br/>18 to double-blind and double-mask a study 11:55:18<br/>19 with a two-time-a-day drug and a 11:55:22<br/>20 three-time-a-day drug would require five 11:55:24<br/>21 sets of pills for everybody in the study 11:55:25<br/>22 to take unless you split it up. 11:55:27<br/>23 Q. Now, who attended this meeting, 11:55:30<br/>24 to the extent you can recall? 11:55:34<br/>25 A. Well, types of people that would 11:55:35</p> <p style="text-align: right;">Page 147</p> |
| <p>1 E. Weiner<br/>2 attend -- well, clearly the people in the 11:55:38<br/>3 to of this e-mail are the people from 11:55:39<br/>4 Pfizer. 11:55:41<br/>5 Q. Would Dr. Geis have been at this 11:55:41<br/>6 meeting? 11:55:44<br/>7 A. Yes, he or -- he might have even 11:55:44<br/>8 been presenting at it, although I think it 11:55:53<br/>9 was Jim Lefkowitz that was presenting. He 11:55:56<br/>10 certainly would have been at it. There 11:56:00<br/>11 would have been maybe Phil Needleman. 11:56:02<br/>12 Again, I'm speculating. But similar 11:56:05<br/>13 counterparts -- and actually, we know that 11:56:07<br/>14 Peter Isakson from Searle went. And 11:56:09<br/>15 usually outside consultants went as well. 11:56:12<br/>16 Q. Who at Pfizer more senior to you 11:56:14<br/>17 would have gone to this? 11:56:18<br/>18 MR. WEISS: I object to the form 11:56:20<br/>19 of the question. 11:56:21<br/>20 A. I believe at one of them Steve 11:56:21<br/>21 Ryder may have gone, but I think he was 11:56:24<br/>22 probably -- it's even possible Craig 11:56:28<br/>23 Saxton. I sort of remember Steve being at 11:56:32<br/>24 one. Actually, I sort of remember Craig 11:56:35<br/>25 being at one, also. 11:56:36</p> <p style="text-align: right;">Page 148</p> | <p>1 E. Weiner<br/>2 Q. And again, Craig Saxton, what 11:56:36<br/>3 was his job? 11:56:40<br/>4 A. He was Steve Ryder's boss. 11:56:40<br/>5 Q. And he was like the head of R&amp;D? 11:56:41<br/>6 A. Head of development. 11:56:43<br/>7 Q. And he was an executive vice 11:56:44<br/>8 president? 11:56:46<br/>9 A. Yes. And I only remember that 11:56:46<br/>10 because we got stuck at O'Hare together. 11:56:46<br/>11 Q. Down at the second page where we 11:56:52<br/>12 were looking at before, if you go under 11:56:54<br/>13 extrapolation, the last comment or 11:56:56<br/>14 question says, "do symptoms predict 11:56:59<br/>15 ulcers. The presentation is conflicted." 11:57:02<br/>16 Do you recall there being 11:57:05<br/>17 discussion that the presentation may have 11:57:07<br/>18 been at odds on that issue? 11:57:09<br/>19 A. Yeah, I don't recall discussion 11:57:10<br/>20 around that. 11:57:12<br/>21 Q. Did you ever -- prior to the 11:57:12<br/>22 submission to the FDA on February 7, 2001, 11:57:16<br/>23 did anyone present any sort of evidence -- 11:57:20<br/>24 MR. SAHAM: Strike that question. 11:57:24<br/>25 (Whereupon, an e-mail dated 11:57:35</p> <p style="text-align: right;">Page 149</p>                                                                            |



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| <p>1 E. Weiner<br/>2 January 20, 2001 was marked 11:57:35<br/>3 Plaintiff's Exhibit 169 11:57:35<br/>4 for identification.) 11:57:36<br/>5 Q. I want to show you what I'm 11:57:36<br/>6 marking as Plaintiff's Exhibit 169. 11:57:38<br/>7 Could you please take a look at 11:58:07<br/>8 that document. 11:58:09<br/>9 MR. SAHAM: And for the record, 11:58:11<br/>10 Plaintiff's Exhibit 169 is an e-mail 11:58:11<br/>11 with an attachment dated January 20, 11:58:14<br/>12 2001. It bears Bates numbers 11:58:17<br/>13 DEFS 00490867 through 877. The e-mail 11:58:22<br/>14 is from Ethan Weiner to Steven W. 11:58:29<br/>15 Ryder and Peter Corr with cc's to 11:58:32<br/>16 Leland Loose and Mona Wahba. 11:58:36<br/>17 Q. Is this an e-mail you would have 11:58:39<br/>18 sent in the ordinary scope of your 11:58:41<br/>19 employment on or about January 20, 2001? 11:58:42<br/>20 MR. WEISS: I object to the form 11:58:46<br/>21 of the question. 11:58:46<br/>22 A. Yes. 11:58:47<br/>23 Q. And Steven Ryder was your 11:58:47<br/>24 supervisor? 11:58:49<br/>25 A. That's correct. 11:58:50</p> <p style="text-align: right;">Page 150</p>                                                                      | <p>1 E. Weiner<br/>2 Q. And he was a vice president at 11:58:50<br/>3 Pfizer? 11:58:52<br/>4 A. Yes. 11:58:53<br/>5 Q. And you may have been a vice 11:59:00<br/>6 president at this point in time; correct? 11:59:00<br/>7 A. Right. 11:59:00<br/>8 Q. So was he considered a senior 11:59:00<br/>9 vice president? 11:59:02<br/>10 A. Probably. He's a bigger vice 11:59:02<br/>11 president than me. 11:59:04<br/>12 Q. But you were both vice 11:59:05<br/>13 president? 11:59:07<br/>14 A. Or I was an executive director. 11:59:07<br/>15 I could go back at my CV and look, but -- 11:59:10<br/>16 Q. Did you bring your CV here 11:59:12<br/>17 today? 11:59:15<br/>18 A. No. I have it on my laptop but 11:59:15<br/>19 it would take most of our lunch period to 11:59:19<br/>20 boot it up. 11:59:24<br/>21 Q. Because I don't think we got 11:59:24<br/>22 your CV, but I could be wrong. 11:59:26<br/>23 Okay. 11:59:29<br/>24 So turning our attention back to 11:59:29<br/>25 what we've marked as Exhibit 169, do you 11:59:31</p> <p style="text-align: right;">Page 151</p>                 |
| <p>1 E. Weiner<br/>2 recognize this document? 11:59:33<br/>3 A. Yes. 11:59:34<br/>4 Q. And what is it? 11:59:35<br/>5 A. So the top page at least is an 11:59:36<br/>6 e-mail that I sent summarizing the next 11:59:42<br/>7 seven or eight or whatever pages after 11:59:46<br/>8 that. 11:59:48<br/>9 Q. And what are the pages attached 11:59:51<br/>10 to the e-mail? 11:59:52<br/>11 A. This is probably the sort of FDA 11:59:53<br/>12 summary -- their review of CLASS 11:59:59<br/>13 submission in advance of the advisory 12:00:02<br/>14 committee. 12:00:06<br/>15 Q. So the FDA would have sent this 12:00:06<br/>16 discussion document to representatives of 12:00:08<br/>17 Pharmacia and Pfizer? 12:00:10<br/>18 A. And then they would have posted 12:00:11<br/>19 it on their Web site as well. But they 12:00:14<br/>20 usually send -- the usual course of these 12:00:17<br/>21 things is that the sponsor sends 12:00:19<br/>22 everything about a month in advance, the 12:00:21<br/>23 FDA sends a sponsor their materials a few 12:00:23<br/>24 days in advance, and then about one day in 12:00:25<br/>25 advance of the meeting they all go up on 12:00:28</p> <p style="text-align: right;">Page 152</p> | <p>1 E. Weiner<br/>2 the Internet. 12:00:31<br/>3 Q. So it doesn't get put in the 12:00:32<br/>4 Internet until right immediately before 12:00:32<br/>5 the meeting? 12:00:34<br/>6 A. A day or two before, pretty 12:00:34<br/>7 close. That's just because people are 12:00:36<br/>8 writing until the last minute. 12:00:39<br/>9 Q. So on January 20, you would have 12:00:40<br/>10 had this as a Pfizer employee but the 12:00:43<br/>11 world wouldn't have; correct? 12:00:45<br/>12 A. Probably for another five or six 12:00:46<br/>13 days. 12:00:49<br/>14 Q. And do you know whether or not 12:00:49<br/>15 anything was disclosed prior to February 6 12:00:51<br/>16 or February 7, 2001? 12:00:54<br/>17 MR. WEISS: I object to the form 12:00:57<br/>18 of the question. 12:00:58<br/>19 A. By Pfizer, Pharmacia, or the 12:00:58<br/>20 FDA? 12:01:01<br/>21 Q. The FDA. 12:01:01<br/>22 A. I don't know their exact 12:01:02<br/>23 disclosure dates. 12:01:04<br/>24 Q. You're just speculating on that? 12:01:05<br/>25 A. Yeah. 12:01:07</p> <p style="text-align: right;">Page 153</p> |

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| <p>1 E. Weiner</p> <p>2 Q. You write here to Dr. Ryder and 12:01:10</p> <p>3 others, "FDA sent two documents yesterday, 12:01:15</p> <p>4 fairly large for advisory briefing 12:01:15</p> <p>5 documents, summarizing their review of 12:01:17</p> <p>6 CLASS." And then you write, "I'm about 12:01:19</p> <p>7 halfway done plodding through them but 12:01:23</p> <p>8 wanted to send on as soon as possible," 12:01:26</p> <p>9 and then you attempt to summarize what the 12:01:26</p> <p>10 FDA said; is that correct? 12:01:29</p> <p>11 A. Yes. 12:01:31</p> <p>12 Q. And the first thing or not the 12:01:31</p> <p>13 first thing but in that first paragraph 12:01:33</p> <p>14 you write, "all drugs look similar to me 12:01:36</p> <p>15 as well." 12:01:40</p> <p>16 Do you see that? It's right 12:01:41</p> <p>17 before the block blacking out or 12:01:44</p> <p>18 redaction. The second sentence after 12:01:47</p> <p>19 that. 12:01:50</p> <p>20 A. Oh, this was -- yeah, this was 12:01:50</p> <p>21 their post-marketing surveillance where 12:01:54</p> <p>22 you can't tell anything about anything 12:01:57</p> <p>23 because there are no denominators. So you 12:01:59</p> <p>24 don't know how much a drug is used 12:02:03</p> <p>25 relative to how many events there are. 12:02:05</p> <p>Page 154</p> | <p>1 E. Weiner</p> <p>2 And I don't even know why they bother 12:02:07</p> <p>3 sometimes, at least with that report. 12:02:11</p> <p>4 These days they have their ARIS database, 12:02:15</p> <p>5 which I think does actually attempt to 12:02:15</p> <p>6 find what the denominators are, in other 12:02:21</p> <p>7 words how many people used the drug. But 12:02:22</p> <p>8 as I recall of this report, it's just 12:02:24</p> <p>9 looking at, you know, we saw this many 12:02:26</p> <p>10 ulcers on Vioxx out in the marketplace 12:02:30</p> <p>11 were reported to us, this many on 12:02:33</p> <p>12 Celebrex, this many on ketorolac, this 12:02:34</p> <p>13 many on diclofenac, and so on without 12:02:39</p> <p>14 knowing how many prescriptions were 12:02:41</p> <p>15 written, how many people took it for how 12:02:43</p> <p>16 long. What do you do with that? 12:02:45</p> <p>17 Q. But also just looking at the 12:02:47</p> <p>18 primary endpoint for CLASS, all the drugs 12:02:49</p> <p>19 looked similar; correct? 12:02:52</p> <p>20 A. I think I'm talking there about 12:02:53</p> <p>21 the post-marketing surveillance review. 12:02:58</p> <p>22 Q. But I'm just talking about if 12:03:00</p> <p>23 you just look at the primary endpoint for 12:03:00</p> <p>24 CLASS, all the drugs look similar because 12:03:01</p> <p>25 there was no statistically significant 12:03:03</p> <p>Page 155</p> |
| <p>1 E. Weiner</p> <p>2 difference -- 12:03:04</p> <p>3 A. That's not what I was saying 12:03:04</p> <p>4 there and I would not agree with that. I 12:03:07</p> <p>5 certainly think there's a lot of 12:03:09</p> <p>6 differences between celecoxib and 12:03:11</p> <p>7 ibuprofen. But what my e-mail is talking 12:03:15</p> <p>8 about is that part of it, the first 12:03:15</p> <p>9 document is the epidemiology piece. The 12:03:18</p> <p>10 second piece is the next paragraph. 12:03:22</p> <p>11 Q. So when you write, "overall the 12:03:24</p> <p>12 number of each type of event was 12:03:27</p> <p>13 comparable for both coxibs and probably 12:03:28</p> <p>14 represents a roughly similar number of 12:03:31</p> <p>15 patient years use," paren, "probably 12:03:33</p> <p>16 somewhat greater for celecoxib," what are 12:03:35</p> <p>17 you referring to? 12:03:38</p> <p>18 A. That's the number of GI events 12:03:39</p> <p>19 reported to FDA from the marketplace on 12:03:42</p> <p>20 rofecoxib and celecoxib. 12:03:48</p> <p>21 Q. And rofecoxib -- 12:03:50</p> <p>22 A. Not a study but Vioxx. 12:03:50</p> <p>23 Q. Rofecoxib is Vioxx? 12:03:51</p> <p>24 A. Yes. 12:03:51</p> <p>25 Q. And so this is one of the 12:03:51</p> <p>Page 156</p>                                                   | <p>1 E. Weiner</p> <p>2 examples that you referenced earlier that 12:03:55</p> <p>3 there would be comparisons between 12:03:57</p> <p>4 Celebrex and Vioxx? 12:04:00</p> <p>5 A. There's several levels of 12:04:01</p> <p>6 evidence. The highest level of evidence 12:04:06</p> <p>7 is a clinical trial where there would have 12:04:08</p> <p>8 been a direct comparison, which was not, 12:04:10</p> <p>9 in fact, done. They did VIGOR, we did 12:04:11</p> <p>10 CLASS. They are different studies in many 12:04:14</p> <p>11 ways. 12:04:14</p> <p>12 The next level of evidence are 12:04:15</p> <p>13 epidemiologic studies where -- and there 12:04:19</p> <p>14 are various designs of that but generally 12:04:21</p> <p>15 you know how many events there were and 12:04:23</p> <p>16 how many people took the drug. It's a 12:04:26</p> <p>17 real life setting. It's not as good 12:04:29</p> <p>18 clinical trial for a whole host of 12:04:37</p> <p>19 reasons, it's retrospective, it's not 12:04:37</p> <p>20 prospective, it's not blinded, you're 12:04:37</p> <p>21 relying on people's memory rather than 12:04:37</p> <p>22 investigators' notes and filling out a 12:04:39</p> <p>23 case report form, many other things. 12:04:41</p> <p>24 And a level of evidence that is 12:04:45</p> <p>25 beneath that even is just post-marketing 12:04:47</p> <p>Page 157</p>                                           |

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| <p>1 E. Weiner<br/>2 surveillance where you don't even know 12:04:47<br/>3 what the denominators are. All you know 12:04:47<br/>4 is how many events were reported to FDA or 12:05:00<br/>5 European agencies and you don't even know 12:05:00<br/>6 how many people took the drug that could 12:05:03<br/>7 have reported something. 12:05:05<br/>8 Q. All I'm getting at -- this is an 12:05:06<br/>9 example of one of the instances where you 12:05:06<br/>10 guys internally at Pfizer were discussing 12:05:09<br/>11 Celebrex in comparison to Vioxx; correct? 12:05:10<br/>12 A. Right. 12:05:13<br/>13 Q. And that was common? 12:05:13<br/>14 A. Yes. 12:05:14<br/>15 Q. And then moving down to the 12:05:19<br/>16 second paragraph it states, "the second 12:05:20<br/>17 document is a summary of the CLASS 12:05:22<br/>18 submission. The seven-page summary of 12:05:25<br/>19 their review is in the attached document, 12:05:27<br/>20 key issues." 12:05:30<br/>21 So now you're describing the 12:05:31<br/>22 attached document; correct? 12:05:33<br/>23 A. Right. 12:05:35<br/>24 So this is summarizing what FDA 12:05:35<br/>25 is saying. 12:05:35</p> <p style="text-align: right;">Page 158</p>                                                                                                                                               | <p>1 E. Weiner<br/>2 Q. And the first they say is, "did 12:05:35<br/>3 not achieve primary endpoint;" correct? 12:05:36<br/>4 A. Yes. 12:05:39<br/>5 Q. And the second thing they say 12:05:39<br/>6 is, "no statistical superiority to 12:05:41<br/>7 diclofenac at any endpoint;" correct? 12:05:43<br/>8 A. Yes. 12:05:45<br/>9 Q. And that's consistent with the 12:05:46<br/>10 results we reviewed in the final report; 12:05:49<br/>11 correct? 12:05:54<br/>12 A. Yes. 12:05:54<br/>13 Q. Then it states that the FDA 12:05:54<br/>14 questioned sponsor's informative censoring 12:05:59<br/>15 explanation; correct? 12:06:05<br/>16 A. Right. And again, we discuss 12:06:05<br/>17 the reasons for that. From a regulatory 12:06:07<br/>18 viewpoint, if you can't prove something, 12:06:08<br/>19 it didn't happen. 12:06:10<br/>20 Q. And ultimately the FDA rejects 12:06:11<br/>21 the explanation; correct? 12:06:14<br/>22 MR. WEISS: I object to the form 12:06:15<br/>23 of the question. 12:06:16<br/>24 A. Yes, for regulatory purposes, 12:06:16<br/>25 they couldn't use it. 12:06:19</p> <p style="text-align: right;">Page 159</p>                |
| <p>1 E. Weiner<br/>2 Q. And dropping down to the last 12:06:20<br/>3 bullet point above the blacked-out area, 12:06:23<br/>4 it says, "they did not raise big concerns 12:06:30<br/>5 over six months versus twelve months 12:06:33<br/>6 analysis," paren, "at least in the 12:06:36<br/>7 conclusions. I need to go through the 12:06:37<br/>8 rest of the document as I would afraid 12:06:39<br/>9 they would." 12:06:42<br/>10 When you actually go through the 12:06:43<br/>11 document, they do raise issues of the six 12:06:46<br/>12 months versus twelve months; correct? 12:06:46<br/>13 A. Yes, they raised some. But I 12:06:47<br/>14 think they ultimately ended up agreeing 12:06:50<br/>15 with us that there was some -- there 12:06:52<br/>16 weren't huge differences between six and 12:06:56<br/>17 twelve months in many of the things, that 12:06:58<br/>18 they're sort of giving the same message. 12:07:01<br/>19 Q. There was certainly a difference 12:07:03<br/>20 in the non-aspirin users as published in 12:07:05<br/>21 the JAMA article in that figure; correct? 12:07:08<br/>22 A. Yeah, we've been through that. 12:07:09<br/>23 Q. And do you know why stuff is 12:07:11<br/>24 blocked out here? Is that talking about 12:07:13<br/>25 myo and cardio infractions (sic) or 12:07:17</p> <p style="text-align: right;">Page 160</p> | <p>1 E. Weiner<br/>2 something? 12:07:22<br/>3 A. I didn't redact these so I don't 12:07:22<br/>4 know what they were looking for. 12:07:23<br/>5 Q. Do you recall -- 12:07:23<br/>6 A. All I know is at the time they 12:07:24<br/>7 take my laptop, they download all the 12:07:29<br/>8 e-mails, and they, you know, I get my 12:07:32<br/>9 laptop back the next day. I don't know 12:07:36<br/>10 what their criteria for redacting things 12:07:38<br/>11 are. 12:07:41<br/>12 Q. And you recall discussing 12:07:42<br/>13 myocardial infarctions in this e-mail? 12:07:45<br/>14 A. It would be speculative because, 12:07:49<br/>15 I mean, it's an e-mail I wrote ten and a 12:07:51<br/>16 half years ago. 12:07:54<br/>17 MR. SAHAM: We all need -- 12:07:54<br/>18 Q. Finish your answer. 12:07:59<br/>19 A. No, I'm done. 12:08:01<br/>20 MR. SAHAM: They're informing me 12:08:02<br/>21 the tape needs to be changed so we are 12:08:04<br/>22 going off the record. 12:08:06<br/>23 THE VIDEOGRAPHER: Stand by. 12:08:07<br/>24 We are going off the record. 12:08:08<br/>25 The time is 12:06 p.m. 12:08:10</p> <p style="text-align: right;">Page 161</p> |

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| 1 E. Weiner                                           | 1 E. Weiner                                            |
| 2 This is the end of tape number 12:08:12             | 2 A F T E R N O O N S E S S I O N 12:08:14             |
| 3 two. 12:08:14                                       | 3 September 22, 2010 12:08:14                          |
| 4 (Lunch recess taken at 12:06 12:08:14               | 4 12:47 p.m. 12:48:59                                  |
| 5 p.m.) 12:08:14                                      | 5 THE VIDEOGRAPHER: We are back on 12:48:59            |
| 6                                                     | 6 the record. The time is 12:47 p.m. 12:49:03          |
| 7                                                     | 7 This is the beginning of tape 12:49:07               |
| 8                                                     | 8 number three. 12:49:08                               |
| 9                                                     | 9 E T H A N W E I N E R, having                        |
| 10                                                    | 10 been previously duly sworn by a Notary              |
| 11                                                    | 11 Public of the State of New York,                    |
| 12                                                    | 12 upon being examined,                                |
| 13                                                    | 13 testified as follows:                               |
| 14                                                    | 14 EXAMINATION CONTINUED BY                            |
| 15                                                    | 15 MR. SAHAM: 12:49:09                                 |
| 16                                                    | 16 Q. Okay. 12:49:09                                   |
| 17                                                    | 17 We were looking at Plaintiff's 12:49:10             |
| 18                                                    | 18 Exhibit 169 in the document that you 12:49:12       |
| 19                                                    | 19 received from the FDA. 12:49:17                     |
| 20                                                    | 20 I'd like to turn your attention 12:49:20            |
| 21                                                    | 21 to -- the document appears to start on 12:49:22     |
| 22                                                    | 22 page seventy-four and I want to refer you 12:49:26  |
| 23                                                    | 23 to page seventy-six of that document. And 12:49:28  |
| 24                                                    | 24 the second full paragraph states, "why was 12:49:39 |
| 25                                                    | 25 celecoxib as given under these exaggerated 12:49:45 |
| Page 162                                              | Page 163                                               |
| 1 E. Weiner                                           | 1 E. Weiner                                            |
| 2 dosing multiples not able to show 12:49:49          | 2 Q. -- in addition to informative 12:50:39            |
| 3 statistical superiority to diclofenac." 12:49:52    | 3 censoring? 12:50:41                                  |
| 4 Was that a question coming from 12:49:54            | 4 A. Which, as I said earlier, we 12:50:42             |
| 5 the FDA? 12:49:56                                   | 5 knew as well, we just felt that to be the 12:50:46   |
| 6 A. Yes. 12:49:57                                    | 6 most plausible. 12:50:51                             |
| 7 Q. So it was accepted that, as we 12:49:59          | 7 Q. And one of those additional 12:50:52              |
| 8 discussed earlier, that it did not show a 12:50:00  | 8 explanations, at least according to the 12:50:54     |
| 9 statistical superiority -- that Celebrex 12:50:02   | 9 FDA, was that the use of multiples of the 12:50:57   |
| 10 did not show statistical superiority to 12:50:04   | 10 X dose of celecoxib resulted in more 12:51:01       |
| 11 diclofenac? 12:50:07                               | 11 clinically important UGI adverse events 12:51:03    |
| 12 A. Yes. 12:50:08                                   | 12 than would have occurred with an X dose 12:51:05    |
| 13 Q. And was there an explanation 12:50:08           | 13 alone? 12:51:14                                     |
| 14 provided to the FDA as to why it couldn't 12:50:13 | 14 A. Yes. 12:51:14                                    |
| 15 provide a statistical superiority to 12:50:17      | 15 Q. And what's that referring to? 12:51:14           |
| 16 diclofenac? 12:50:19                               | 16 A. That refers to the fact that the 12:51:14        |
| 17 MR. WEISS: I object to the form 12:50:19           | 17 dose in osteoarthritis was two hundred 12:51:14     |
| 18 of the question. 12:50:21                          | 18 milligrams a day or even one hundred, one 12:51:16  |
| 19 A. Well, the company had provided 12:50:21         | 19 to two hundred, and rheumatoid arthritis 12:51:19   |
| 20 in its briefing document the informative 12:50:23  | 20 could go as high as four hundred and yet 12:51:23   |
| 21 censoring discussion and that was I think 12:50:27 | 21 the study used eight hundred. It was one 12:51:26   |
| 22 the main argument that was provided. 12:50:31      | 22 hundred for OA, two hundred for RA, and 12:51:29    |
| 23 Q. And the FDA responded that there 12:50:32       | 23 then this was four hundred in the study. 12:51:34   |
| 24 are a variety of possible explanations -- 12:50:35 | 24 Q. And that was a possible 12:51:35                 |
| 25 A. That's correct. 12:50:38                        | 25 explanation for the differential? 12:51:36          |
| Page 164                                              | Page 165                                               |



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| <p>1 E. Weiner</p> <p>2 A. Well, if you give twice as much, 12:51:38</p> <p>3 you're going to probably have more side 12:51:41</p> <p>4 effects. 12:51:44</p> <p>5 Q. But that was prespecified in the 12:51:44</p> <p>6 protocol that that was what the -- 12:51:44</p> <p>7 A. That that was the dose, yes, the 12:51:44</p> <p>8 dose was double the RA dose, four times 12:51:45</p> <p>9 the OA dose. 12:51:49</p> <p>10 Q. And as you remarked earlier, 12:51:51</p> <p>11 this hypothesis was not testable based on 12:51:52</p> <p>12 the trial data? 12:51:53</p> <p>13 A. Right. So we agreed with them 12:51:55</p> <p>14 on that. 12:51:58</p> <p>15 Q. And the second explanation 12:51:58</p> <p>16 provided down here is differential 12:52:03</p> <p>17 adaptation, and that's in the next 12:52:05</p> <p>18 paragraph? 12:52:10</p> <p>19 A. Yes. 12:52:10</p> <p>20 Q. And another explanation is just 12:52:10</p> <p>21 that celecoxib was not, in fact, safer on 12:52:12</p> <p>22 this comparison with diclofenac? 12:52:16</p> <p>23 A. Right. But again, you'd have to 12:52:21</p> <p>24 say that two to fourfold the dose of 12:52:24</p> <p>25 celecoxib versus onefold the dose of 12:52:27</p> <p>Page 166</p> | <p>1 E. Weiner</p> <p>2 diclofenac. 12:52:31</p> <p>3 Q. Right. 12:52:31</p> <p>4 But that was the dosage being 12:52:32</p> <p>5 used? 12:52:34</p> <p>6 A. Yes, that was the dosage being 12:52:34</p> <p>7 used. 12:52:37</p> <p>8 Q. And with this data you couldn't 12:52:37</p> <p>9 tell whether at a lower dosage the same 12:52:37</p> <p>10 result would have occurred? 12:52:38</p> <p>11 A. That's correct. 12:52:40</p> <p>12 Q. And then moving down to the last 12:52:40</p> <p>13 full paragraph on this page, the middle of 12:52:44</p> <p>14 that paragraph, the FDA writes, "however, 12:52:47</p> <p>15 it is unclear that the potential for 12:52:49</p> <p>16 informative censoring represented a 12:52:52</p> <p>17 significant bias in assessment of the 12:52:55</p> <p>18 outcome of the CSUGIE as defined in this 12:52:57</p> <p>19 trial." 12:53:01</p> <p>20 Do you see that? 12:53:01</p> <p>21 A. Yes. 12:53:02</p> <p>22 Q. And do you agree that's an 12:53:03</p> <p>23 accurate statement? 12:53:05</p> <p>24 A. Sorry, I was reading ahead. 12:53:06</p> <p>25 Q. The statement, "however, it is 12:53:11</p> <p>Page 167</p>                                                                                                                                                                        |
| <p>1 E. Weiner</p> <p>2 unclear that the potential for informative 12:53:13</p> <p>3 censoring represented a significant bias 12:53:14</p> <p>4 in assessment of the outcome of the CSUGIE 12:53:16</p> <p>5 as defined in this trial," that's what the 12:53:19</p> <p>6 FDA said; correct? 12:53:22</p> <p>7 A. Right. 12:53:23</p> <p>8 Q. And do you believe that's an 12:53:24</p> <p>9 accurate statement? 12:53:25</p> <p>10 A. I would paraphrase that as to 12:53:26</p> <p>11 what I said earlier and what they say 12:53:28</p> <p>12 further up the page inasmuch as that you 12:53:30</p> <p>13 can't prove that. Data will not support 12:53:31</p> <p>14 proving it. 12:53:34</p> <p>15 Q. So since you can't prove it, 12:53:35</p> <p>16 it's unclear whether that was the impact 12:53:37</p> <p>17 at work? 12:53:39</p> <p>18 A. It may be. Maybe it wasn't. 12:53:40</p> <p>19 Q. So it's unclear? 12:53:43</p> <p>20 A. Right. 12:53:44</p> <p>21 Q. Now, the -- go ahead. 12:53:44</p> <p>22 A. The -- no, go ahead. 12:53:48</p> <p>23 Q. The last sentence on the bottom 12:53:50</p> <p>24 of the page says, "the timing of the UGI 12:53:52</p> <p>25 events may also hold clues to 12:53:55</p> <p>Page 168</p>   | <p>1 E. Weiner</p> <p>2 understanding any role for informative 12:53:57</p> <p>3 censoring. For example, both crude and 12:54:01</p> <p>4 Kaplan-Meier event rates in the first six 12:54:05</p> <p>5 months," paren, "table seven," closed 12:54:07</p> <p>6 paren, "showed that for celecoxib seven of 12:54:11</p> <p>7 the eleven uncensored events occurred in 12:54:14</p> <p>8 the first three months. However, in the 12:54:15</p> <p>9 diclofenac group, all nine events occurred 12:54:17</p> <p>10 in the first hundred days with a cluster 12:54:20</p> <p>11 of five events within the first fifteen 12:54:22</p> <p>12 days and four more events occurring 12:54:25</p> <p>13 sporadically through approximately day 12:54:27</p> <p>14 eighty-five." 12:54:29</p> <p>15 What's being expressed there? 12:54:31</p> <p>16 A. Just the time at which the 12:54:33</p> <p>17 events occurred in the different treatment 12:54:37</p> <p>18 groups. 12:54:38</p> <p>19 Q. And what does a Kaplan-Meier 12:54:38</p> <p>20 curve illustrate? 12:54:46</p> <p>21 A. Well, it is a graph of time 12:54:47</p> <p>22 versus the probability of an event 12:54:53</p> <p>23 occurring by that time and it's the 12:54:54</p> <p>24 standard output for event-driven clinical 12:55:00</p> <p>25 trials. 12:55:04</p> <p>Page 169</p> |



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| <p>1 E. Weiner</p> <p>2 Q. And do you recall that the 12:55:04</p> <p>3 Kaplan event curves comparatively amongst 12:55:06</p> <p>4 Celebrex and the other NSAIDs were most 12:55:10</p> <p>5 favorable to Celebrex at six months as 12:55:13</p> <p>6 opposed to the entire study? 12:55:16</p> <p>7 MR. WEISS: I object to the form 12:55:20</p> <p>8 of the question. 12:55:21</p> <p>9 A. They were the furthest apart at 12:55:21</p> <p>10 six months. In fact, what informative 12:55:24</p> <p>11 censoring seeks to address and the various 12:55:26</p> <p>12 other explanations on the previous page of 12:55:29</p> <p>13 the FDA review is the shape of the curves. 12:55:31</p> <p>14 And that's, in fact, the top of page 12:55:34</p> <p>15 seventy-seven paragraph you just read, a 12:55:39</p> <p>16 similar thing, that Kaplan-Meier curve, 12:55:40</p> <p>17 because of these early events with 12:55:43</p> <p>18 diclofenac, rises quickly and then 12:55:45</p> <p>19 flattens out whereas the Celebrex curve 12:55:48</p> <p>20 rises slowly. 12:55:51</p> <p>21 Q. And the FDA writes at the bottom 12:55:52</p> <p>22 of that graph, "therefore, although it 12:55:55</p> <p>23 does seem that more patients dropped out 12:55:57</p> <p>24 of the diclofenac group due to GI 12:56:00</p> <p>25 symptoms, this does not seem to be an 12:56:02</p> <p>Page 170</p> | <p>1 E. Weiner</p> <p>2 adequate explanation for the observed UGI 12:56:04</p> <p>3 results between diclofenac and celecoxib." 12:56:08</p> <p>4 That was the FDA's view? 12:56:10</p> <p>5 A. Yes, and I think adequacy by 12:56:12</p> <p>6 their definition is a high level proof 12:56:15</p> <p>7 they're comfortable in putting in a label 12:56:18</p> <p>8 as opposed to what is a plausible or the 12:56:20</p> <p>9 most plausible explanation. 12:56:23</p> <p>10 Q. And that was also Dr. Zwillich's 12:56:25</p> <p>11 view? 12:56:28</p> <p>12 A. Yes. There were other people at 12:56:29</p> <p>13 Pfizer who felt that informative censoring 12:56:31</p> <p>14 was not the most plausible explanation, 12:56:32</p> <p>15 but most of us did. 12:56:34</p> <p>16 Q. And that was also Dr. Wahba's 12:56:34</p> <p>17 view? 12:56:37</p> <p>18 A. Yes. 12:56:37</p> <p>19 Q. And who other than Drs. Zwillich 12:56:37</p> <p>20 and Dr. Wahba expressed that opinion at 12:56:42</p> <p>21 either than Pfizer or Pharmacia or Searle? 12:56:51</p> <p>22 A. To my knowledge, I think they 12:56:51</p> <p>23 were the only ones. 12:56:51</p> <p>24 Q. Do you know if any of the 12:56:51</p> <p>25 outside consultants expressed that 12:56:53</p> <p>Page 171</p>                                                                      |
| <p>1 E. Weiner</p> <p>2 opinion? 12:56:55</p> <p>3 A. I don't recall. 12:56:55</p> <p>4 Q. You don't know one way or the 12:56:56</p> <p>5 other? 12:56:58</p> <p>6 A. Right. 12:56:58</p> <p>7 Q. What if you go down to the 12:56:58</p> <p>8 middle of page seventy-seven, the FDA 12:57:05</p> <p>9 writes, "was informative censoring an 12:57:07</p> <p>10 important component in the CLASS trial. 12:57:10</p> <p>11 One way to attempt to answer this question 12:57:12</p> <p>12 is with a clinical trial designed to do 12:57:15</p> <p>13 so." 12:57:19</p> <p>14 Do you know if a clinical trial 12:57:19</p> <p>15 was ever designed to test this hypothesis? 12:57:19</p> <p>16 A. Well, there were subsequent 12:57:21</p> <p>17 trials that were done the design of which 12:57:23</p> <p>18 I've long since forgotten, but things such 12:57:27</p> <p>19 as CONDOR which I think partially were 12:57:31</p> <p>20 meant to address that. But I think it's 12:57:34</p> <p>21 an important paragraph because again it 12:57:35</p> <p>22 gets to the idea that FDA also felt this 12:57:38</p> <p>23 is plausible, it just couldn't be proven 12:57:41</p> <p>24 and they can't accept from a regulatory 12:57:45</p> <p>25 viewpoint unproven things but it's 12:57:48</p> <p>Page 172</p>                                                                                   | <p>1 E. Weiner</p> <p>2 sufficiently plausible to become the 12:57:51</p> <p>3 hypothesis of another trial to be tested. 12:57:55</p> <p>4 Q. If you turn to page eighty-two 12:57:56</p> <p>5 of this document in the conclusions, 12:57:58</p> <p>6 conclusion number two, the FDA writes, 12:58:03</p> <p>7 "celecoxib did not demonstrate statistical 12:58:05</p> <p>8 superiority to NSAIDs," paren, "pooled or 12:58:08</p> <p>9 either comparator," paren, "diclofenac and 12:58:13</p> <p>10 ibuprofen with regards to the primary 12:58:17</p> <p>11 safety endpoint of CSUGIEs at any point in 12:58:20</p> <p>12 the time although there were trends that 12:58:24</p> <p>13 favored celecoxib." 12:58:26</p> <p>14 Is that an accurate statement? 12:58:27</p> <p>15 A. Yes. That again gets to the 12:58:29</p> <p>16 primary endpoint. 12:58:32</p> <p>17 Q. And that point number two that I 12:58:34</p> <p>18 just read, that's different than what was 12:58:38</p> <p>19 published in the JAMA article; correct? 12:58:40</p> <p>20 A. The JAMA article didn't focus on 12:58:42</p> <p>21 the primary endpoint. 12:58:45</p> <p>22 Q. Do you think it's proper to 12:58:47</p> <p>23 publish a paper -- 12:58:56</p> <p>24 MR. SAHAM: Strike that. 12:58:56</p> <p>25 Q. Have you ever published a paper 12:58:57</p> <p>Page 173</p> |

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| <p>1 E. Weiner</p> <p>2 related to a clinical trial where the main 12:58:58</p> <p>3 outcome measure discussed in the paper was 12:59:04</p> <p>4 not the primary outcome measure? 12:59:08</p> <p>5 MR. WEISS: I object to the form 12:59:10</p> <p>6 of the question. 12:59:11</p> <p>7 A. No, but of my publications, I 12:59:11</p> <p>8 think very few were actually clinical 12:59:15</p> <p>9 trial subjects. 12:59:18</p> <p>10 Q. But you've never published such 12:59:18</p> <p>11 a paper? 12:59:21</p> <p>12 A. No. 12:59:22</p> <p>13 (Whereupon, a document entitled 12:59:22</p> <p>14 FDA CLASS Assessment was marked 12:59:22</p> <p>15 Plaintiff's Exhibit 170 12:59:22</p> <p>16 for identification.) 12:59:30</p> <p>17 Q. I want to show you what I'm 12:59:30</p> <p>18 marking as Plaintiff's Exhibit 170. 12:59:31</p> <p>19 Could you please take a look at 12:59:58</p> <p>20 Plaintiff's Exhibit 170. 12:59:59</p> <p>21 MR. SAHAM: And for the record, 13:00:02</p> <p>22 Plaintiff's Exhibit 170 is a 13:00:03</p> <p>23 multi-page document, at the top it 13:00:05</p> <p>24 says FDA CLASS assessment, and it 13:00:08</p> <p>25 bears Bates numbers DEFS 00799475 13:00:11</p> <p>Page 174</p> | <p>1 E. Weiner</p> <p>2 through 483 and then attached at the 13:00:16</p> <p>3 last page is a metadata report that 13:00:24</p> <p>4 indicates that this document came out 13:00:26</p> <p>5 of your custodial file. 13:00:29</p> <p>6 A. So I don't know who wrote it, 13:00:32</p> <p>7 when they wrote it, why they wrote, or who 13:00:32</p> <p>8 they sent it to. I'm not even sure what 13:00:35</p> <p>9 it is. 13:00:37</p> <p>10 Q. So you don't recognize it? 13:00:37</p> <p>11 A. No. 13:00:38</p> <p>12 Q. But you're not disputing that it 13:00:39</p> <p>13 came out of your electronic files? 13:00:41</p> <p>14 A. I would have no basis to dispute 13:00:43</p> <p>15 that. 13:00:46</p> <p>16 Q. And do you recall receiving any 13:00:47</p> <p>17 summaries of the FDA reviewers' opinions 13:00:50</p> <p>18 before the advisory committee? 13:00:54</p> <p>19 MR. SAHAM: Strike that. 13:00:56</p> <p>20 Q. Do you recall receiving 13:00:57</p> <p>21 summaries of the FDA reviewers' reports 13:00:59</p> <p>22 prior to the advisory committee meeting? 13:01:02</p> <p>23 A. Well, you showed me an e-mail 13:01:08</p> <p>24 where I wrote one. I don't recall getting 13:01:11</p> <p>25 them from others. But I clearly saw the 13:01:14</p> <p>Page 175</p> |
| <p>1 E. Weiner</p> <p>2 FDA documents. 13:01:19</p> <p>3 Q. And some of the FDA documents, 13:01:20</p> <p>4 there's a report from Dr. Witter; is that 13:01:23</p> <p>5 correct? 13:01:26</p> <p>6 A. I believe so. 13:01:26</p> <p>7 Q. And a report from Dr. Goldkind? 13:01:26</p> <p>8 A. Yes. 13:01:30</p> <p>9 Q. And a report from Dr. Lu? 13:01:31</p> <p>10 A. I don't recall that one. 13:01:33</p> <p>11 Q. She was the statistician. 13:01:34</p> <p>12 A. Okay. 13:01:36</p> <p>13 Q. So you recall there were at 13:01:36</p> <p>14 least three reports generated prior to the 13:01:37</p> <p>15 advisory committee meeting? 13:01:40</p> <p>16 A. Yes. 13:01:43</p> <p>17 Q. And you would have received them 13:01:43</p> <p>18 in advance of the meeting? 13:01:44</p> <p>19 A. They were available to me. I 13:01:45</p> <p>20 probably did not read Dr. Lu's, I don't 13:01:45</p> <p>21 think. I would have left that to the 13:01:47</p> <p>22 statisticians. 13:01:49</p> <p>23 Q. Looking at the first page of 13:01:56</p> <p>24 what I've marked as Exhibit 170, under Dr. 13:01:56</p> <p>25 Witter it says, "FDA comment, subset ASA 13:01:57</p> <p>Page 176</p>                                   | <p>1 E. Weiner</p> <p>2 analysis not a prospectively designed 13:02:01</p> <p>3 endpoint." 13:02:04</p> <p>4 You would agree with me that the 13:02:05</p> <p>5 ASA analysis was not a prospectively 13:02:06</p> <p>6 designed endpoint in the protocol; is that 13:02:10</p> <p>7 correct? 13:02:13</p> <p>8 A. This is that very first line; 13:02:13</p> <p>9 right? Okay. I agree with that. It 13:02:16</p> <p>10 still was -- okay. 13:02:23</p> <p>11 Q. And then looking at the second 13:02:26</p> <p>12 box, the second sentence, it says, "for 13:02:28</p> <p>13 non-aspirin C versus NSAID or C versus D 13:02:32</p> <p>14 not statistically different," that's 13:02:34</p> <p>15 accurate; correct? 13:02:37</p> <p>16 A. At twelve months. That's true 13:02:37</p> <p>17 at twelve months. 13:02:49</p> <p>18 Q. And then it says, "but C versus 13:02:49</p> <p>19 I different?" 13:02:52</p> <p>20 A. Yes. 13:02:53</p> <p>21 Q. So the only claim that could 13:02:53</p> <p>22 have been made there is that -- 13:02:56</p> <p>23 MR. SAHAM: Strike that. 13:03:00</p> <p>24 Q. Turning to the third page of 13:03:01</p> <p>25 Plaintiff's Exhibit 170 -- and again, this 13:03:21</p> <p>Page 177</p>                                                               |

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| <p>1 E. Weiner<br/>2 is talking about the FDA comment of Laura 13:03:24<br/>3 Lu. 13:03:27<br/>4 Do you see that at the top? 13:03:27<br/>5 A. Yes. 13:03:29<br/>6 Q. And in the first box it says, 13:03:30<br/>7 "imputation of CSUGIEs and adjustment for 13:03:38<br/>8 informative censoring not valid." 13:03:38<br/>9 Do you see that? 13:03:38<br/>10 A. Yes. 13:03:39<br/>11 Q. And that's what the FDA 13:03:40<br/>12 expressed at the advisory committee 13:03:41<br/>13 hearing? 13:03:43<br/>14 A. Yes. 13:03:44<br/>15 MR. WEISS: I object to the form 13:03:44<br/>16 of the question. 13:03:45<br/>17 Q. And then going down to the 13:03:45<br/>18 bottom, the last sentence on that page in 13:03:49<br/>19 that middle box says, "post hoc ASA 13:03:52<br/>20 analysis not prespecified." 13:03:53<br/>21 Do you see that? 13:03:56<br/>22 A. Yes. 13:03:57<br/>23 Q. And the FDA expressed that, when 13:04:02<br/>24 they looked at the protocol, that the ASA 13:04:07<br/>25 analysis that was presented by the 13:04:10<br/>Page 178</p>                                         | <p>1 E. Weiner<br/>2 sponsors at the committee hearing was a 13:04:12<br/>3 post hoc analysis; correct? 13:04:15<br/>4 MR. WEISS: I object to the form 13:04:17<br/>5 of the question. 13:04:18<br/>6 A. Yes, although I believe that 13:04:19<br/>7 parts of that analysis ended up in the 13:04:23<br/>8 final agreed label. 13:04:26<br/>9 Q. But it was a post hoc analysis; 13:04:27<br/>10 correct? 13:04:30<br/>11 A. Yes, but FDA still felt it 13:04:30<br/>12 usable enough to label for it at the end 13:04:34<br/>13 of the day. 13:04:37<br/>14 Q. Then turning to the next page of 13:04:41<br/>15 the document under the FDA comment of 13:04:43<br/>16 Larry Goldkind, at the bottom in the 13:04:45<br/>17 middle box it states, "rationale for 13:04:50<br/>18 six-month has a meaningful endpoint not 13:04:50<br/>19 convincing." 13:04:53<br/>20 Do you see that? 13:04:54<br/>21 A. Which page are you on? 13:04:56<br/>22 Q. I'm on page four. The middle 13:04:57<br/>23 box. 13:05:03<br/>24 A. Number seven? 13:05:03<br/>25 Q. Page four, if you go all the way 13:05:05<br/>Page 179</p>        |
| <p>1 E. Weiner<br/>2 down to the bottom under the middle 13:05:07<br/>3 column, FDA comment Larry Goldkind, it 13:05:10<br/>4 says, "rationale for six-month as a 13:05:11<br/>5 meaningful endpoint not convincing." 13:05:13<br/>6 Do you see that? 13:05:15<br/>7 A. Yes. 13:05:17<br/>8 Q. And that was the view of the 13:05:17<br/>9 FDA; correct? 13:05:20<br/>10 MR. WEISS: I object to the form 13:05:20<br/>11 of the question. 13:05:22<br/>12 A. Apparently so, yes. 13:05:22<br/>13 Q. Turning to the next page of the 13:05:24<br/>14 document, we're still under the comment 13:05:38<br/>15 middle box of Larry Goldkind, next to 13:05:41<br/>16 twenty-three, the second to last box in 13:05:42<br/>17 the middle, do you see that? 13:05:44<br/>18 A. Yes. 13:05:46<br/>19 Q. It says, "multiple subanalyses 13:05:47<br/>20 produce serious multiplicity issues that 13:05:50<br/>21 the sponsor has not addressed." 13:05:54<br/>22 Do you see that? 13:05:55<br/>23 A. Yes. 13:05:56<br/>24 Q. And that again was the opinion 13:05:57<br/>25 of the FDA? 13:05:58<br/>Page 180</p> | <p>1 E. Weiner<br/>2 MR. WEISS: I object to the form 13:05:59<br/>3 of the question. 13:06:00<br/>4 A. Yes. I also note that whoever 13:06:00<br/>5 the author of this document is felt that 13:06:02<br/>6 these things were addressable. In other 13:06:04<br/>7 words -- and again, the context is 13:06:07<br/>8 difficult. If this is a summary of 13:06:10<br/>9 queries from FDA to be answered, that's 13:06:13<br/>10 different than a summary of a final 13:06:18<br/>11 opinion from the FDA and I don't know 13:06:20<br/>12 which of those this actually is. 13:06:22<br/>13 Q. But Dr. Witter wrote a report; 13:06:24<br/>14 correct? 13:06:28<br/>15 A. Yes. 13:06:28<br/>16 Q. And Dr. Goldkind wrote a report; 13:06:28<br/>17 correct? 13:06:31<br/>18 A. Yes. 13:06:31<br/>19 Q. And Dr. Lu wrote a report; 13:06:32<br/>20 correct? 13:06:34<br/>21 A. Yes. 13:06:34<br/>22 Q. And those were posted on the FDA 13:06:34<br/>23 Web site immediately prior to the advisory 13:06:37<br/>24 committee meeting on February 7? 13:06:41<br/>25 A. Yes. But between the advisory 13:06:44<br/>Page 181</p> |

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| <p>1 E. Weiner<br/>2 committee and the labeling, there was back 13:06:49<br/>3 and forth and part of that was the 13:06:52<br/>4 opportunity to address some of the issues 13:06:56<br/>5 raised in the report. Just because an 13:06:58<br/>6 issue is raised doesn't mean it's not 13:07:00<br/>7 necessarily addressable. 13:07:03<br/>8 (Whereupon, an e-mail dated 13:07:05<br/>9 January 23, 2001 was marked 13:07:05<br/>10 Plaintiff's Exhibit 171 13:07:05<br/>11 for identification.) 13:07:06<br/>12 Q. I want to show you what I'm 13:07:06<br/>13 marking as Plaintiff's Exhibit 171. 13:07:09<br/>14 Could you please take a look at 13:07:28<br/>15 that document. 13:07:30<br/>16 MR. SAHAM: And for the record, 13:07:31<br/>17 Plaintiff's Exhibit 171 bears the 13:07:33<br/>18 Bates numbers DEFS 00309959 13:07:37<br/>19 through 960. And the top e-mail in 13:07:44<br/>20 the e-mail chain is from Ethan Weiner 13:07:50<br/>21 dated January 23, 2001 to Mona Wahba. 13:07:54<br/>22 Q. Did you write this e-mail on or 13:07:58<br/>23 about January 23, 2001? 13:08:00<br/>24 A. Yes. 13:08:01<br/>25 Q. And you did so in the ordinary 13:08:02</p> <p style="text-align: right;">Page 182</p>                                         | <p>1 E. Weiner<br/>2 scope of your employment at Pfizer? 13:08:03<br/>3 MR. WEISS: I object to the form 13:08:06<br/>4 of the question. 13:08:06<br/>5 A. Yes. 13:08:07<br/>6 Q. And you write, "thanks. 13:08:07<br/>7 Obviously the six versus twelve months is 13:08:09<br/>8 a big issue, also, as outlined in the rest 13:08:13<br/>9 of the document. I have told that to 13:08:17<br/>10 Ryder and Corr." 13:08:19<br/>11 What can you discussing there in 13:08:21<br/>12 this e-mail? 13:08:25<br/>13 A. Well, if you look back at the 13:08:26<br/>14 earlier e-mail that I had written, which I 13:08:28<br/>15 think is one of the previous exhibits as 13:08:30<br/>16 well, it's a summary of the things that 13:08:32<br/>17 FDA put up on their Web site just prior to 13:08:34<br/>18 the advisory committee. And clearly as 13:08:39<br/>19 we've been through in much of this 13:08:41<br/>20 questioning they had raised the issue of 13:08:44<br/>21 six versus twelve months. 13:08:47<br/>22 Q. And you had discussed this issue 13:08:48<br/>23 with Ryder and Corr? 13:08:50<br/>24 A. Well, it was clear that that was 13:08:52<br/>25 one of the things that was in play in 13:08:53</p> <p style="text-align: right;">Page 183</p> |
| <p>1 E. Weiner<br/>2 terms of the evaluation. 13:08:55<br/>3 Q. And it was a big issue to the 13:08:58<br/>4 FDA whether to use the six or twelve 13:09:00<br/>5 months of data? 13:09:03<br/>6 A. Well, it was an important issue. 13:09:03<br/>7 We had been through previous discussions, 13:09:05<br/>8 rehearsals that we had, that the agency 13:09:09<br/>9 had mentioned that they were going to 13:09:12<br/>10 focus on twelve months, we had to decide 13:09:14<br/>11 whether they were going to focus on twelve 13:09:16<br/>12 months or still focus on six months, so 13:09:18<br/>13 that was one of the more important things 13:09:21<br/>14 to decide in the days leading up to the 13:09:23<br/>15 advisory committee, which is the time 13:09:25<br/>16 frame from which this e-mail comes. 13:09:35<br/>17 Q. And prior to this time at least, 13:09:35<br/>18 publicly the company had focused on the 13:09:35<br/>19 six-month data; correct? 13:09:35<br/>20 MR. WEISS: I object to the form 13:09:36<br/>21 of the question. 13:09:36<br/>22 A. Yes. 13:09:37<br/>23 Q. And that six-month data was more 13:09:37<br/>24 favorable to Celebrex; correct? 13:09:40<br/>25 A. Yes. 13:09:41</p> <p style="text-align: right;">Page 184</p> | <p>1 E. Weiner<br/>2 (Whereupon, an e-mail dated 13:09:41<br/>3 January 26, 2001 was marked 13:09:41<br/>4 Plaintiff's Exhibit 172 13:09:41<br/>5 for identification.) 13:09:43<br/>6 Q. I want to show you what I'm 13:09:43<br/>7 marking as Plaintiff's Exhibit 172. 13:09:44<br/>8 Could you please take a look at 13:10:12<br/>9 that document. 13:10:15<br/>10 MR. SAHAM: And for the record, 13:10:16<br/>11 this document bears the Bates numbers 13:10:31<br/>12 DEFS 00078937 through 939 and it's an 13:10:34<br/>13 e-mail that appears to attach 13:10:41<br/>14 Kaplan-Meier curves comparing CLASS 13:10:47<br/>15 and VIGOR. 13:10:51<br/>16 Q. Did you write this e-mail on or 13:10:53<br/>17 about January 26, 2001? 13:10:57<br/>18 A. Yes. 13:10:58<br/>19 Q. And you did so as part of your 13:10:59<br/>20 job at Pfizer? 13:11:00<br/>21 A. Yes, but I did so pretty much 13:11:01<br/>22 totally out of intellectual curiosity. As 13:11:04<br/>23 I note in the e-mail, nobody would accept 13:11:08<br/>24 this as a valid comparison really, no 13:11:11<br/>25 journal or anything. You can't take two 13:11:14</p> <p style="text-align: right;">Page 185</p>                                                                    |



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| <p>1 E. Weiner<br/>2 studies and superimpose them. But 13:11:17<br/>3 sometimes it's fun and interesting to do 13:11:20<br/>4 that just to see what you might learn and 13:11:21<br/>5 what future studies you might design. 13:11:23<br/>6 Q. And it's obvious that comparing 13:11:27<br/>7 how Celebrex was doing on various -- 13:11:29<br/>8 MR. SAHAM: Strike that. 13:11:32<br/>9 Q. Comparing Celebrex and Vioxx is 13:11:33<br/>10 something that you regularly did at 13:11:36<br/>11 Pfizer; correct? 13:11:38<br/>12 MR. WEISS: I object to the form 13:11:39<br/>13 of the question. 13:11:39<br/>14 A. Yes, I think it was part of my 13:11:40<br/>15 role to do that. 13:11:42<br/>16 Q. And here you were looking at how 13:11:42<br/>17 would CLASS have been different if we were 13:11:45<br/>18 to use the primary outcome measure that 13:11:47<br/>19 VIGOR used? 13:11:50<br/>20 A. Partly that. What if we had 13:11:50<br/>21 used naproxen instead of ibuprofen and 13:11:53<br/>22 diclofenac. There's a lot of things that 13:11:56<br/>23 would could possibly learn from this. 13:11:58<br/>24 But again, as I said in the 13:12:01<br/>25 e-mail, you have to take all of this with 13:12:03</p> <p style="text-align: right;">Page 186</p>                                                           | <p>1 E. Weiner<br/>2 a grain of salt. It's comparing apples 13:12:06<br/>3 and oranges. 13:12:09<br/>4 Q. And then when you look at the 13:12:10<br/>5 first attachment, CLASS all versus VIGOR, 13:12:11<br/>6 for PUB plus POB, and that's the combined 13:12:15<br/>7 endpoint that is referenced at tables 13:12:16<br/>8 three and four of Exhibit 115, the final 13:12:18<br/>9 report? 13:12:20<br/>10 A. Right. 13:12:22<br/>11 Q. And what does this Kaplan-Meier 13:12:22<br/>12 graph reveal? 13:12:26<br/>13 A. Well, it's really hard to read, 13:12:28<br/>14 for one thing, inasmuch as I can't really 13:12:30<br/>15 read the key. I mean, you see naproxen at 13:12:35<br/>16 the top, so that's clearly having the 13:12:39<br/>17 highest rate of ulcers. You see rofecoxib 13:12:41<br/>18 somewhere in the middle, so it's not the 13:12:45<br/>19 lowest. I don't know what the other three 13:12:46<br/>20 are, I could guess, but I can't possibly 13:12:51<br/>21 read that tiny little key. You know, I 13:12:54<br/>22 don't remember from ten years ago where 13:12:57<br/>23 they all fell into place. 13:12:59<br/>24 Q. When did you first become aware 13:13:01<br/>25 that Vioxx was also going to be up for 13:13:04</p> <p style="text-align: right;">Page 187</p> |
| <p>1 E. Weiner<br/>2 safety evaluation at the same advisory 13:13:08<br/>3 committee meeting at Celebrex? 13:13:11<br/>4 A. Whenever I first heard that 13:13:13<br/>5 there would be an advisory committee 13:13:13<br/>6 meeting, and I suspect that was probably a 13:13:13<br/>7 couple -- three months before it actually 13:13:15<br/>8 took place, but I don't remember when I 13:13:18<br/>9 found out. 13:13:19<br/>10 Q. And commercially, did you view 13:13:25<br/>11 Vioxx getting a safety upgrade as being 13:13:28<br/>12 bad for Celebrex sales? 13:13:31<br/>13 MR. WEISS: I object to the form 13:13:32<br/>14 of the question. 13:13:33<br/>15 A. It depended on what that upgrade 13:13:33<br/>16 looked like relative to what -- you know, 13:13:40<br/>17 ultimately what is the Vioxx label after 13:13:43<br/>18 all of this, all the dust settles look 13:13:48<br/>19 like as compared to the Celebrex label and 13:13:51<br/>20 where is one drug possibly safer than 13:13:55<br/>21 another and where isn't it. But clearly 13:13:57<br/>22 we were competing for largely the same 13:14:00<br/>23 markets, so it would have been important. 13:14:03<br/>24 Q. So is it fair to say the 13:14:06<br/>25 relative comparison between Vioxx and 13:14:10</p> <p style="text-align: right;">Page 188</p> | <p>1 E. Weiner<br/>2 Celebrex with respect to a safety upgrade 13:14:13<br/>3 was important to you? 13:14:16<br/>4 A. It was important to the company. 13:14:16<br/>5 Q. And at the bottom of the e-mail 13:14:18<br/>6 on the first page of 1752, Exhibit 172, 13:14:23<br/>7 you write, "one can see the early NSAID 13:14:26<br/>8 blip in CLASS not apparent in VIGOR." 13:14:30<br/>9 What are you referring to there? 13:14:33<br/>10 A. Remember the other previous 13:14:35<br/>11 exhibit, the FDA review where they talked 13:14:36<br/>12 about those early events on diclofenac? 13:14:38<br/>13 That's probably what I was referring to. 13:14:40<br/>14 Q. Because naproxen didn't have a 13:14:42<br/>15 cluster of early events? 13:14:45<br/>16 A. It doesn't appear that way. 13:14:47<br/>17 Q. Where diclofenac did? 13:14:49<br/>18 A. Right. 13:14:50<br/>19 (Whereupon, an e-mail dated 13:15:00<br/>20 January 27, 2001 was marked 13:15:00<br/>21 Plaintiff's Exhibit 173 13:15:00<br/>22 for identification.) 13:15:01<br/>23 Q. I want to show you what I'm 13:15:01<br/>24 marking as Plaintiff's Exhibit 174. 13:15:05<br/>25 MR. WEISS: One hundred 13:15:07</p> <p style="text-align: right;">Page 189</p>                                                              |



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| <p>1 E. Weiner</p> <p>2 seventy-three? 13:15:07</p> <p>3 MR. SAHAM: Oh, one hundred 13:15:08</p> <p>4 seventy-three. Thank you. 13:15:09</p> <p>5 Q. I want to show you what I'm 13:15:10</p> <p>6 marking as Plaintiff's Exhibit 173. 13:15:12</p> <p>7 Could you please take a look at 13:15:33</p> <p>8 that document. 13:15:36</p> <p>9 MR. SAHAM: And for the record, 13:15:36</p> <p>10 Plaintiff's Exhibit 173 is a 13:15:37</p> <p>11 three-page e-mail chain bearing Bates 13:15:42</p> <p>12 numbers DEFS 00291345 through 347. 13:15:44</p> <p>13 And specifically the e-mail in the 13:16:00</p> <p>14 chain is from you to Mona Wahba dated 13:16:03</p> <p>15 January 26, 2001 and the e-mail before 13:16:05</p> <p>16 that is dated January 25, 2001 and 13:16:08</p> <p>17 it's from Mona Wahba to you and 13:16:11</p> <p>18 others. 13:16:15</p> <p>19 Q. Do you recognize this e-mail 13:16:15</p> <p>20 chain? 13:16:25</p> <p>21 A. Yes. 13:16:25</p> <p>22 Q. And what is it? 13:16:25</p> <p>23 A. Well, again it's summarizing 13:16:25</p> <p>24 very long day that they spent before the 13:16:27</p> <p>25 advisory committee finalizing their 13:16:30</p> <p style="text-align: right;">Page 190</p>                       | <p>1 E. Weiner</p> <p>2 preparations. 13:16:33</p> <p>3 Q. And you would have sent and 13:16:33</p> <p>4 received this e-mail in the ordinary scope 13:16:35</p> <p>5 of your employment at Pfizer? 13:16:37</p> <p>6 MR. WEISS: I object to the form 13:16:38</p> <p>7 of the question. 13:16:39</p> <p>8 A. Yes. 13:16:39</p> <p>9 Q. And Dr. Wahba wrote to you on 13:16:39</p> <p>10 January 25, 2001 -- and I'm looking at -- 13:16:47</p> <p>11 under number -- point number two, do you 13:16:54</p> <p>12 see where she has -- actually points one 13:16:57</p> <p>13 through four, I'm looking at point two. 13:17:00</p> <p>14 Do you see that? 13:17:03</p> <p>15 A. Uh-huh, yes, I do. 13:17:03</p> <p>16 Q. And towards the bottom of that 13:17:04</p> <p>17 she writes, it is a safe route to take 13:17:07</p> <p>18 then. The informative censoring issue, 13:17:09</p> <p>19 especially after knowing the FDA's 13:17:13</p> <p>20 position, "imputation of CSUGIEs and 13:17:16</p> <p>21 adjustment for informative censoring is 13:17:20</p> <p>22 not valid." 13:17:23</p> <p>23 Do you see that? 13:17:24</p> <p>24 A. Where are you looking, I'm 13:17:25</p> <p>25 sorry? 13:17:27</p> <p style="text-align: right;">Page 191</p>                                            |
| <p>1 E. Weiner</p> <p>2 Q. I'm looking at number 2C, point 13:17:27</p> <p>3 number two -- 13:17:29</p> <p>4 A. "No BE with the used diclo?" 13:17:30</p> <p>5 Q. Right, right. 13:17:33</p> <p>6 But then if you move on, it's 13:17:34</p> <p>7 talking about the FDA's position with 13:17:35</p> <p>8 respect to informative censoring. And she 13:17:38</p> <p>9 says if the FDA's position is "imputation 13:17:40</p> <p>10 of CSUGIEs and adjustment for informative 13:17:45</p> <p>11 censoring is not valid?" 13:17:49</p> <p>12 Do you see that? 13:17:50</p> <p>13 A. Yes. 13:17:51</p> <p>14 Q. And that accurately reflects the 13:17:51</p> <p>15 FDA's position? 13:17:54</p> <p>16 MR. WEISS: I object to the form 13:17:55</p> <p>17 of the question. 13:17:55</p> <p>18 A. Yeah, again, for all the reasons 13:17:56</p> <p>19 that we talked about in terms of the 13:17:59</p> <p>20 burden of proof. 13:18:02</p> <p>21 Q. And that also accurately 13:18:03</p> <p>22 reflects Dr. Wahba and Dr. Zwillich's 13:18:05</p> <p>23 expressed view on this issue? 13:18:05</p> <p>24 MR. WEISS: I object to the form 13:18:08</p> <p>25 of the question. It assumes facts not 13:18:09</p> <p style="text-align: right;">Page 192</p> | <p>1 E. Weiner</p> <p>2 in evidence. 13:18:11</p> <p>3 A. Yes, it does. 13:18:12</p> <p>4 Q. And then point number three it 13:18:13</p> <p>5 says, "we will drop the six-month analysis 13:18:15</p> <p>6 and the imputation." 13:18:19</p> <p>7 Do you see that? 13:18:20</p> <p>8 A. Yes. 13:18:22</p> <p>9 Q. And is it correct that the 13:18:22</p> <p>10 company or neither of the companies, 13:18:22</p> <p>11 Pharmacia nor Pfizer, argued or made the 13:18:24</p> <p>12 informative censoring point at the open 13:18:26</p> <p>13 advisory committee meeting on February 7 13:18:31</p> <p>14 or February 8? 13:18:32</p> <p>15 A. I believe that's the case 13:18:33</p> <p>16 because we focused on the twelve-month 13:18:35</p> <p>17 data. But I don't recall if it still came 13:18:38</p> <p>18 up or not. I know that we made the 13:18:43</p> <p>19 decision to focus on twelve-month data but 13:18:45</p> <p>20 I do not know for sure that we didn't talk 13:18:48</p> <p>21 at all about informative censoring. 13:18:51</p> <p>22 Q. And if you turn to the second 13:18:53</p> <p>23 page of the document, there is an e-mail 13:18:56</p> <p>24 from Mona Wahba to Leland Loose and 13:18:58</p> <p>25 yourself. 13:19:02</p> <p style="text-align: right;">Page 193</p> |

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| <p>1 E. Weiner<br/>2 Do you see that? 13:19:02<br/>3 A. Yes. 13:19:04<br/>4 Q. And it's dated January 22, 2001? 13:19:04<br/>5 A. Right. 13:19:07<br/>6 Q. And you would have received this 13:19:09<br/>7 in the ordinary scope of your employment 13:19:10<br/>8 at Pfizer? 13:19:13<br/>9 MR. WEISS: I object to the form 13:19:13<br/>10 of the question. 13:19:14<br/>11 A. Yes. 13:19:14<br/>12 Q. And Dr. Wahba writes to you, 13:19:15<br/>13 "rationale for six-month analysis is not 13:19:19<br/>14 convincing for the following reasons. 13:19:22<br/>15 Number one, a trend of disproportionate 13:19:25<br/>16 withdraws of patients during the entire 13:19:28<br/>17 study, not just the first six months." 13:19:31<br/>18 Do you see that? 13:19:35<br/>19 A. Yes. 13:19:36<br/>20 Q. And that was Dr. Wahba's view? 13:19:36<br/>21 A. Yes. 13:19:39<br/>22 MR. WEISS: I object to the form 13:19:39<br/>23 of question. Mischaracterizes the 13:19:40<br/>24 document. 13:19:42<br/>25 Q. And that accurately reflects the 13:19:42<br/>Page 194</p>                                                                                                                                                                              | <p>1 E. Weiner<br/>2 fact that the trend that was being 13:19:45<br/>3 referenced with respect to the informative 13:19:47<br/>4 censoring claim was apparently during the 13:19:49<br/>5 entire trial, not just during the first 13:19:52<br/>6 six months? 13:19:55<br/>7 MR. WEISS: I object to the form 13:19:56<br/>8 of the question. 13:19:57<br/>9 A. I think that's one of her 13:19:57<br/>10 arguments as to why she doesn't think that 13:19:59<br/>11 the informative censoring is the most 13:20:02<br/>12 plausible explanation. 13:20:05<br/>13 As I said earlier, one could 13:20:08<br/>14 neither prove nor disprove informative 13:20:11<br/>15 censoring with the data at hand so one had 13:20:14<br/>16 to make arguments as to what makes it more 13:20:16<br/>17 or less plausible. These are all valid 13:20:19<br/>18 scientific points. My own view was taking 13:20:21<br/>19 everything into account, I still at the 13:20:25<br/>20 end of the day felt it to be the most 13:20:28<br/>21 plausible explanation for what was going 13:20:30<br/>22 on, clearly not the only one and clearly 13:20:33<br/>23 nothing that could be proven. One could 13:20:36<br/>24 marshal arguments and say that it was more 13:20:39<br/>25 or less likely depending upon one's point 13:20:42<br/>Page 195</p> |
| <p>1 E. Weiner<br/>2 of view. So I think Dr. Loose and others 13:20:44<br/>3 agreed with me and I agreed with people 13:20:47<br/>4 that had devised that argument. Dr. Wahba 13:20:50<br/>5 and Dr. Zwillich didn't and they all had 13:20:54<br/>6 valid scientific reasons, as did we. 13:20:58<br/>7 So I acknowledge that she 13:21:01<br/>8 disagreed with that and is marshalling 13:21:04<br/>9 some of the reasons why she did, but 13:21:06<br/>10 that's what scientific debate is all 13:21:08<br/>11 about. 13:21:11<br/>12 Q. And who are the people that 13:21:12<br/>13 devised that argument, the informative 13:21:14<br/>14 censoring argument? 13:21:17<br/>15 A. Well, it originated I think 13:21:19<br/>16 from, I would suspect -- well, the people 13:21:22<br/>17 at Pharmacia. Which people actually had 13:21:24<br/>18 the idea of looking for that first I don't 13:21:28<br/>19 know. 13:21:31<br/>20 Q. Did Dr. Geis ever express that 13:21:32<br/>21 he was in favor of the informative 13:21:35<br/>22 censoring hypothesis? 13:21:37<br/>23 A. Well, he believed it, yes. 13:21:38<br/>24 Q. And do you recall whether -- Dr. 13:21:48<br/>25 Geis worked for Searle before the merger; 13:21:48<br/>Page 196</p> | <p>1 E. Weiner<br/>2 correct? 13:21:48<br/>3 A. Yes. 13:21:48<br/>4 Q. And do you know or were you 13:21:48<br/>5 privy to any discussions between Searle 13:21:51<br/>6 and Pharmacia regarding the CLASS data 13:21:53<br/>7 prior to the merger? 13:21:54<br/>8 A. No. 13:21:55<br/>9 Q. Now, point number two in Dr. 13:21:56<br/>10 Wahba's e-mail to you, she writes, "in the 13:22:01<br/>11 diclo group, all nine uncensored events 13:22:04<br/>12 occurred in the first hundred days with a 13:22:08<br/>13 cluster of five events in the first 13:22:10<br/>14 fifteen days and the other four occurring 13:22:13<br/>15 sporadically through day eighty-five." 13:22:15<br/>16 Why does that point argue 13:22:18<br/>17 against the informative censoring 13:22:20<br/>18 hypothesis? 13:22:24<br/>19 MR. WEISS: I object to the form 13:22:25<br/>20 of the question. 13:22:26<br/>21 A. It doesn't really, in my mind. 13:22:26<br/>22 I mean, she says informative censoring was 13:22:30<br/>23 going on before six months, and that may 13:22:33<br/>24 well be the case. Because I think if you 13:22:37<br/>25 look at the diclofenac Kaplan-Meier curve, 13:22:39<br/>Page 197</p>                                                                                                                           |

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| <p>1 E. Weiner<br/>2 it flattens out fairly early. It starts 13:22:42<br/>3 out going up fast and then falls off, and 13:22:47<br/>4 that would be the effect of informative 13:22:49<br/>5 censoring for that to happen. So to me 13:22:52<br/>6 that early blip if anything adds rather 13:22:55<br/>7 than subtracts weight to the informative 13:22:55<br/>8 censoring argument. 13:23:04<br/>9 Q. But you couldn't have claimed 13:23:04<br/>10 long-term if you used any data less than 13:23:06<br/>11 six months of data; correct? 13:23:09<br/>12 MR. WEISS: I object to the form 13:23:10<br/>13 of the question. 13:23:11<br/>14 A. In a long-term trial, you're 13:23:12<br/>15 looking at everything that happens up 13:23:15<br/>16 until the end of the trial. So early 13:23:17<br/>17 events are important, it's just that later 13:23:19<br/>18 events are important, also. 13:23:23<br/>19 Q. But the later events were not 13:23:24<br/>20 reported in the JAMA article; correct? 13:23:26<br/>21 A. Again, for the reasons that 13:23:27<br/>22 we've been through in terms of what was 13:23:29<br/>23 believed to be the most valid argument. 13:23:31<br/>24 But certainly the events happening up 13:23:35<br/>25 through this little blip were in there. 13:23:38</p> <p style="text-align: right;">Page 198</p> | <p>1 E. Weiner<br/>2 (Whereupon, an e-mail dated 13:23:38<br/>3 January 27, 2001 was marked 13:23:38<br/>4 Plaintiff's Exhibit 174 13:23:38<br/>5 for identification.) 13:23:53<br/>6 Q. I want to show you what I'm 13:23:53<br/>7 marking as Plaintiff's Exhibit 174. 13:23:55<br/>8 Could you please take a look at 13:24:20<br/>9 Plaintiff's Exhibit 174. 13:24:22<br/>10 MR. SAHAM: For the record, this 13:24:24<br/>11 is a multiple page e-mail chain 13:24:26<br/>12 bearing Bates numbers DEFS 00028977 13:24:29<br/>13 through 980 and the top e-mail is from 13:24:37<br/>14 Ethan Weiner to Leland Loose. 13:24:44<br/>15 Q. Do you recognize this e-mail 13:24:48<br/>16 chain? 13:24:50<br/>17 A. Yes. 13:24:50<br/>18 Q. And are these e-mails you would 13:24:51<br/>19 have sent and received at Pfizer during 13:24:54<br/>20 January of 2001? 13:24:58<br/>21 A. Yes. 13:24:59<br/>22 Q. And you would have sent and 13:25:01<br/>23 received these e-mails in the ordinary 13:25:02<br/>24 scope of your employment there? 13:25:04<br/>25 MR. WEISS: I object to the form 13:25:04</p> <p style="text-align: right;">Page 199</p>                                                                                                                                                                    |
| <p>1 E. Weiner<br/>2 of the question. 13:25:06<br/>3 A. Yes. 13:25:06<br/>4 Q. And at the top e-mail you write 13:25:07<br/>5 to Leland Loose, "I don't know what you 13:25:11<br/>6 think but I feel Mona has really stepped 13:25:13<br/>7 up to the plate on CLASS. In my view, she 13:25:17<br/>8 has a clear handle on the issues and is 13:25:21<br/>9 doing all the right things in a 13:25:23<br/>10 constructive way. I'm very encouraged by 13:25:25<br/>11 this. What do you think." 13:25:28<br/>12 You wrote that on January 27, 13:25:29<br/>13 2001? 13:25:32<br/>14 A. Right. 13:25:32<br/>15 Q. And you thought Dr. Wahba was 13:25:33<br/>16 doing a good job with respect to her CLASS 13:25:35<br/>17 assignments? 13:25:39<br/>18 A. Right. That doesn't mean I 13:25:39<br/>19 agreed with her on informative censoring. 13:25:41<br/>20 As I said earlier, there's room for 13:25:44<br/>21 legitimate scientific debate. 13:25:44<br/>22 Q. But you felt she was doing a 13:25:45<br/>23 good job on her CLASS responsibilities? 13:25:47<br/>24 A. Yes. 13:25:51<br/>25 Q. Do you know what DeLap is? 13:25:51</p> <p style="text-align: right;">Page 200</p>                                                                                                                                                     | <p>1 E. Weiner<br/>2 A. He's one of the people at FDA. 13:25:56<br/>3 I don't recall what his responsibility was 13:26:00<br/>4 relative to Witter, Lu, and Goldkind. 13:26:01<br/>5 Q. And down at the bottom paragraph 13:26:07<br/>6 on this first page Dr. Wahba writes to you 13:26:10<br/>7 and Dr. Loose and others and states, "if 13:26:13<br/>8 CX had beaten the NSAIDs on primary 13:26:18<br/>9 endpoint, would we still have taken the 13:26:22<br/>10 same approach re informative censoring." 13:26:26<br/>11 Do you see that? 13:26:29<br/>12 A. Yes. 13:26:30<br/>13 Q. Do you think the companies would 13:26:30<br/>14 have taken the same approach if they would 13:26:31<br/>15 have met their primary endpoint? 13:26:34<br/>16 MR. WEISS: I object to the form 13:26:36<br/>17 of the question. 13:26:38<br/>18 A. It's a very hypothetical 13:26:38<br/>19 question. I think what you're trying to 13:26:38<br/>20 ask is, if things looked good, would you 13:26:39<br/>21 still do this. But things looked good. 13:26:39<br/>22 It may have well been that there was no 13:26:43<br/>23 informative censoring going on. I mean, 13:26:44<br/>24 it's an impossible hypothetical to answer. 13:26:47<br/>25 I mean, if the trial results 13:26:55</p> <p style="text-align: right;">Page 201</p> |

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| <p>1 E. Weiner<br/>2 were different but there was evidence for 13:26:57<br/>3 informative censoring, then we probably 13:27:00<br/>4 would have pointed that out. If there was 13:27:03<br/>5 no evidence, then we wouldn't. I mean, 13:27:04<br/>6 there's so many thousands of permutations 13:27:12<br/>7 and combinations. It's an imponderable 13:27:16<br/>8 question. 13:27:19<br/>9 Q. Do you recall anyone ever 13:27:19<br/>10 claiming or stating that -- 13:27:21<br/>11 MR. SAHAM: Strike that. 13:27:21<br/>12 Q. Do you recall anyone ever 13:27:22<br/>13 stating that informative censoring was 13:27:23<br/>14 just a pretext for explaining why Celebrex 13:27:26<br/>15 didn't separate from the comparator 13:27:29<br/>16 NSAIDs? 13:27:33<br/>17 A. Can you repeat the question? 13:27:33<br/>18 MR. SAHAM: Can you read that 13:27:34<br/>19 back, please. 13:27:35<br/>20 (Whereupon the requested portion 13:27:36<br/>21 was read back by the reporter) 13:27:50<br/>22 A. I would conjecture that many 13:27:50<br/>23 people probably said that, but that 13:27:53<br/>24 doesn't -- has no impact on whether I 13:27:59<br/>25 think it's plausible or not. 13:28:04<br/>Page 202</p> | <p>1 E. Weiner<br/>2 Q. Who do you recall -- 13:28:06<br/>3 A. No one specific. I mean, 13:28:07<br/>4 there's probably lots of people at Merck. 13:28:09<br/>5 But I have no specific recollection of 13:28:13<br/>6 having a conversation with somebody about 13:28:15<br/>7 that. 13:28:17<br/>8 Q. Looking at the next page of 13:28:17<br/>9 Exhibit 174, the e-mail at the bottom from 13:28:30<br/>10 Mona Wahba to yourself, Dr. Loose, and 13:28:33<br/>11 others dated January 25, 2001, do you see 13:28:42<br/>12 that? 13:28:42<br/>13 A. Yes. 13:28:42<br/>14 Q. And she writes down towards the 13:28:42<br/>15 bottom, "after nine hours of debate, we 13:28:42<br/>16 agreed on the following for tomorrow's 13:28:44<br/>17 meeting. We will inform that we missed on 13:28:46<br/>18 the primary endpoint." 13:28:48<br/>19 Do you see that? 13:28:50<br/>20 A. Yes. 13:28:51<br/>21 Q. Who is she saying there you're 13:28:52<br/>22 going to inform that we missed on the 13:28:54<br/>23 primary endpoint? 13:28:55<br/>24 A. Presumably this is what's going 13:28:55<br/>25 into the advisory committee presentation, 13:28:58<br/>Page 203</p> |
| <p>1 E. Weiner<br/>2 so that will be in the presentation. 13:29:01<br/>3 Q. So is that saying it won't be 13:29:03<br/>4 buried, it will be expressed right at the 13:29:07<br/>5 beginning that we missed the primary 13:29:07<br/>6 endpoint? 13:29:09<br/>7 MR. WEISS: I object to the form 13:29:09<br/>8 of the question. 13:29:10<br/>9 A. Yes. 13:29:10<br/>10 Q. And that's something different 13:29:11<br/>11 than what occurred in the JAMA article 13:29:13<br/>12 that's Wolf Exhibit 3? 13:29:15<br/>13 MR. WEISS: I object to the form 13:29:16<br/>14 of the question. 13:29:17<br/>15 A. This was in response to previous 13:29:17<br/>16 presentations that were being constructed 13:29:19<br/>17 for the advisory committee. That had 13:29:23<br/>18 nothing to do with the JAMA article. 13:29:26<br/>19 Q. But in the JAMA article, there's 13:29:28<br/>20 no statement up front that says, quote 13:29:28<br/>21 unquote, we missed the primary endpoint? 13:29:30<br/>22 A. Yes, that's correct. 13:29:30<br/>23 MR. WEISS: You're not talking 13:29:33<br/>24 about Wolf's editorial; right? 13:29:34<br/>25 Q. Then looking at point number 13:29:41<br/>Page 204</p>                   | <p>1 E. Weiner<br/>2 three in this same e-mail, Dr. Wahba 13:29:43<br/>3 writes, "we will drop the six-month 13:29:45<br/>4 analysis and the imputation." 13:29:48<br/>5 Is that referring to the 13:29:50<br/>6 abandonment of the informative censoring 13:29:51<br/>7 argument before the FDA? 13:29:55<br/>8 MR. WEISS: I object to the form 13:29:57<br/>9 of the question. 13:30:00<br/>10 A. Yes. 13:30:04<br/>11 Q. And that argument was made in 13:30:04<br/>12 the briefing material submitted to the FDA 13:30:07<br/>13 that were posted on the Web site prior to 13:30:08<br/>14 the hearing? 13:30:10<br/>15 A. Yes. 13:30:11<br/>16 Q. But it was not followed up upon 13:30:11<br/>17 at the February 7 advisory committee in 13:30:14<br/>18 the open session? 13:30:18<br/>19 MR. WEISS: I object to the form 13:30:19<br/>20 of the question. 13:30:20<br/>21 MR. SAHAM: Strike that. That's 13:30:20<br/>22 a bad question. Your objection's 13:30:21<br/>23 noted. 13:30:23<br/>24 Q. You just testified that the 13:30:23<br/>25 informative censoring explanation was in 13:30:27<br/>Page 205</p>                                               |



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| <p>1 E. Weiner<br/>2 the briefing document that was posted for 13:30:31<br/>3 the Web site, the FDA Web site, 13:30:33<br/>4 immediately before the advisory committee 13:30:36<br/>5 hearing; is that correct? 13:30:37<br/>6 A. Yes. 13:30:38<br/>7 Q. And is decision was made prior 13:30:38<br/>8 to February 7 not to aggressively pursue 13:30:40<br/>9 that argument at the open session; is that 13:30:43<br/>10 correct? 13:30:45<br/>11 MR. WEISS: I object to the form 13:30:45<br/>12 of the question. 13:30:47<br/>13 A. Yes, the reason again being that 13:30:47<br/>14 the FDA was going to focus on twelve-month 13:30:52<br/>15 data and the informative censoring was the 13:30:56<br/>16 argument why the six-month data would be 13:31:00<br/>17 the most useful time point. And again, it 13:31:03<br/>18 was decided -- the company's weighing 13:31:08<br/>19 presenting that versus, which we felt to 13:31:13<br/>20 be the most useful presentation of the 13:31:17<br/>21 data, but if FDA's going to be presenting 13:31:19<br/>22 twelve months when it just detracted from 13:31:23<br/>23 the function of the advisory committee to 13:31:25<br/>24 be talking about totally different cuts of 13:31:27<br/>25 the data between us and the FDA. 13:31:29</p> <p style="text-align: right;">Page 206</p> | <p>1 E. Weiner<br/>2 (Whereupon, an e-mail dated 13:31:29<br/>3 April 19, 2001 was marked 13:31:29<br/>4 Plaintiff's Exhibit 175 13:31:29<br/>5 for identification.) 13:31:33<br/>6 Q. I'm showing you what I'm marking 13:31:33<br/>7 as Plaintiff's Exhibit 175. 13:31:35<br/>8 Could you please take a look at 13:31:37<br/>9 that document. 13:31:40<br/>10 MR. SAHAM: Which, for the 13:31:41<br/>11 record, bears Bates numbers 13:31:42<br/>12 DEFS 00170697 through 698. It's an 13:31:47<br/>13 e-mail from Stephen Cristo to yourself 13:31:50<br/>14 and others dated April 19, 2001 with 13:31:53<br/>15 an attachment. 13:31:58<br/>16 Q. And I'll ask you if you 13:32:01<br/>17 recognize this document. 13:32:03<br/>18 A. Yes. 13:32:03<br/>19 Q. And what is it? 13:32:04<br/>20 A. Well, it's just a summary of the 13:32:05<br/>21 -- one of the labeling meetings held with 13:32:09<br/>22 FDA. 13:32:11<br/>23 Q. And you would have received this 13:32:11<br/>24 in the ordinary scope of your employment 13:32:13<br/>25 at Pfizer? 13:32:15</p> <p style="text-align: right;">Page 207</p>                                                                                                                                                                           |
| <p>1 E. Weiner<br/>2 MR. WEISS: I object to the form 13:32:16<br/>3 of the question. 13:32:17<br/>4 A. Yes. 13:32:18<br/>5 Q. And the attached document 13:32:18<br/>6 states, "the meeting got off to a rocky 13:32:22<br/>7 start with Tom Abrams from DDMAC stating 13:32:24<br/>8 that it is unacceptable to make claims 13:32:30<br/>9 based on post hoc analyses, especially 13:32:34<br/>10 when you did not meet the primary 13:32:37<br/>11 endpoint." 13:32:39<br/>12 Who is Tom Abrams? 13:32:40<br/>13 A. Well, according to this, he's 13:32:42<br/>14 somebody from DDMAC. 13:32:45<br/>15 Q. What's DDMAC? 13:32:46<br/>16 A. It's a part of the FDA. They 13:32:48<br/>17 deal with monitoring advertisements from 13:32:51<br/>18 drug companies, basically. 13:32:56<br/>19 Q. And do you agree that it's 13:32:57<br/>20 unacceptable to make claims based on post 13:32:58<br/>21 hoc analyses when you didn't meet the 13:33:02<br/>22 primary endpoint? 13:33:04<br/>23 A. I would not state that as a 13:33:05<br/>24 categorical rule. It depends on the 13:33:08<br/>25 strength of the data. Occasionally that, 13:33:11</p> <p style="text-align: right;">Page 208</p>                                                                                                                                        | <p>1 E. Weiner<br/>2 if it's compelling, has ended up in 13:33:13<br/>3 labeling. And the next sentence points 13:33:15<br/>4 out that actually Rick Spivey, who was the 13:33:19<br/>5 Pharmacia regulatory person, took issue 13:33:23<br/>6 with that comment anyway. 13:33:26<br/>7 Q. And then dropping down to the 13:33:28<br/>8 third paragraph in this page, the second 13:33:28<br/>9 sentence says, "FDA expressed concerns 13:33:29<br/>10 about slippery slope in allowing details 13:33:32<br/>11 of a secondary analysis further evaluated 13:33:36<br/>12 by comparator NSAID and then analyzed by 13:33:39<br/>13 subset of non-aspirin users." 13:33:43<br/>14 Do you see that? 13:33:46<br/>15 A. Yes. 13:33:47<br/>16 Q. And is that the FDA being 13:33:48<br/>17 critical of the multiple non-prespecified 13:33:51<br/>18 endpoints being presented as part of the 13:33:56<br/>19 labeling discussions? 13:33:58<br/>20 MR. WEISS: I object to the form 13:34:00<br/>21 of the question. 13:34:01<br/>22 A. I don't think they're critical 13:34:09<br/>23 of that having been done, I think they're 13:34:09<br/>24 critical or concerned about putting it 13:34:09<br/>25 into a label. Again, there's a very 13:34:09</p> <p style="text-align: right;">Page 209</p> |



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| <p>1 E. Weiner<br/>2 different standard of what is suitable for 13:34:12<br/>3 labeling and what is suitable for valid 13:34:14<br/>4 scientific discussion. So I think what 13:34:17<br/>5 they're saying here is that they don't say 13:34:22<br/>6 that those post hoc analyses are wrong or 13:34:24<br/>7 of no clinical meaning, but they do not 13:34:28<br/>8 make the standard of, you know, of 13:34:31<br/>9 rigorous proof that would be required to 13:34:33<br/>10 put in a label. 13:34:37<br/>11 Q. And again, that was one of the 13:34:38<br/>12 purposes of the CLASS trial was to try and 13:34:40<br/>13 get the label changed? 13:34:43<br/>14 A. Yes. 13:34:45<br/>15 Q. And who is Stephen Cristo? 13:34:45<br/>16 A. He was one of the regulatory 13:34:47<br/>17 people from Pfizer. 13:34:49<br/>18 Q. And what was his job, more 13:34:54<br/>19 specifically? 13:34:56<br/>20 A. Vis-a-vis the others I don't 13:34:56<br/>21 remember. Obviously part of it was to go 13:35:00<br/>22 to this meeting and report back. 13:35:01<br/>23 (Whereupon, an e-mail dated 13:35:01<br/>24 August 28, 2001 was marked 13:35:01<br/>25 Plaintiff's Exhibit 176 13:35:01</p> <p style="text-align: right;">Page 210</p> | <p>1 E. Weiner<br/>2 for identification.) 13:35:50<br/>3 Q. I want to show you what I'm 13:35:50<br/>4 marking Plaintiff's Exhibit 176. 13:35:51<br/>5 Could you please take a look at 13:36:08<br/>6 Plaintiff's Exhibit 176. 13:36:10<br/>7 MR. SAHAM: And for the record, 13:36:12<br/>8 Plaintiff's Exhibit 176 is a four-page 13:36:13<br/>9 e-mail chain with Bates numbers 13:36:18<br/>10 DEFS 03825679 through 682. 13:36:22<br/>11 Q. And I'd ask you if you recognize 13:36:34<br/>12 this e-mail chain. 13:36:35<br/>13 A. Yes. 13:36:37<br/>14 Q. And what is it? 13:36:37<br/>15 A. This is an e-mail discussion 13:36:39<br/>16 back and forth with the design of a 13:36:44<br/>17 potential study to follow up on CLASS. 13:36:47<br/>18 Q. And these are e-mails you would 13:36:50<br/>19 have sent and received in the ordinary 13:36:52<br/>20 course of your employment at Pfizer? 13:36:54<br/>21 A. Yes. 13:36:55<br/>22 Q. And the top e-mail is from Mark 13:36:56<br/>23 Fletcher to you dated August 28, 2001? 13:37:01<br/>24 A. Yes. 13:37:04<br/>25 Q. And who is Mark Fletcher? 13:37:04</p> <p style="text-align: right;">Page 211</p> |
| <p>1 E. Weiner<br/>2 A. Mark was one of the people who 13:37:06<br/>3 reported to me. 13:37:10<br/>4 Q. And it says subject, summary of 13:37:11<br/>5 third telecon on CLASS II issues? 13:37:13<br/>6 A. Yes. 13:37:17<br/>7 Q. Was there potentially going to 13:37:18<br/>8 be a CLASS II trial? 13:37:19<br/>9 A. Yes. 13:37:19<br/>10 Q. And was there a CLASS II trial? 13:37:19<br/>11 A. Well, there was CONDOR. Whether 13:37:22<br/>12 that was CLASS II or not, I don't know. 13:37:24<br/>13 But clearly further GI work was done. 13:37:27<br/>14 Q. And what is CONDOR? 13:37:31<br/>15 A. That was a study, I was very 13:37:32<br/>16 peripherally involved with it but it's 13:37:35<br/>17 completed, at this point, I think. It was 13:37:37<br/>18 looking at celecoxib versus I think 13:37:40<br/>19 diclofenac plus omeprazole, if I'm not 13:37:44<br/>20 mistaken. But it was looking not at 13:37:50<br/>21 CSUGIEs but rather at GI blood loss. 13:37:55<br/>22 Q. And do you know if that study 13:37:58<br/>23 was initiated after this lawsuit was 13:37:59<br/>24 filed? 13:38:00<br/>25 A. I have no idea. 13:38:00</p> <p style="text-align: right;">Page 212</p>                                         | <p>1 E. Weiner<br/>2 Q. And who was involved in the 13:38:02<br/>3 CONDOR trial? 13:38:07<br/>4 A. It would have probably been 13:38:08<br/>5 Mitch Gandelman and his group. Liz Kitsis 13:38:10<br/>6 was gone by then, I think. 13:38:14<br/>7 Q. Where did she go? 13:38:16<br/>8 A. She left the company, left the 13:38:18<br/>9 industry entirely. 13:38:20<br/>10 Q. Do you know why she left? 13:38:21<br/>11 A. I think she just, you know, it's 13:38:23<br/>12 a stressful, stressful kind of work. I 13:38:28<br/>13 think she just kind of had enough of it. 13:38:31<br/>14 Q. Did she ever express any 13:38:33<br/>15 negative opinions about how the CLASS data 13:38:33<br/>16 was presented? 13:38:36<br/>17 A. Not that I recall. 13:38:36<br/>18 Q. Do you know where Ms. Kitsis or 13:38:40<br/>19 Dr. Kitsis is now? 13:38:43<br/>20 A. I believe she lives in 13:38:46<br/>21 Westchester someplace. 13:38:47<br/>22 Q. Do you know where she works? 13:38:49<br/>23 A. No, I don't even know what she 13:38:51<br/>24 does. 13:38:53<br/>25 Q. Do you know if it was her 13:38:53</p> <p style="text-align: right;">Page 213</p>               |

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| <p>1 E. Weiner<br/>2 decision or the company's decision for her 13:38:55<br/>3 to leave? 13:38:57<br/>4 A. I'm pretty sure it was hers, but 13:38:57<br/>5 I should probably just say I don't know 13:39:00<br/>6 because I don't have that -- 13:39:02<br/>7 Q. And do you know approximately 13:39:03<br/>8 when she left? 13:39:05<br/>9 A. 2003 or four. 13:39:05<br/>10 Q. Do you know why -- so is CONDOR 13:39:17<br/>11 and CLASS II, are those synonymous or are 13:39:19<br/>12 those different? 13:39:23<br/>13 A. No, not really. 13:39:24<br/>14 CLASS II would have been a study 13:39:24<br/>15 that looked at the same endpoints as CLASS 13:39:24<br/>16 I, I would suspect, and CONDOR doesn't. 13:39:28<br/>17 Q. And that was never done; right? 13:39:31<br/>18 A. Right. 13:39:33<br/>19 Q. And you write on August 28, 2001 13:39:33<br/>20 to Mark Fletcher, "having shown with CLASS 13:39:36<br/>21 that six-month results can look different 13:39:39<br/>22 from one-year results, will anything less 13:39:42<br/>23 than a year," paren, "especially three 13:39:45<br/>24 months," closed paren, "ever be taken 13:39:48<br/>25 seriously. I doubt it." 13:39:53<br/>Page 214</p> | <p>1 E. Weiner<br/>2 You wrote that on August 28, 13:39:54<br/>3 2001? 13:39:58<br/>4 A. Yes. 13:39:58<br/>5 Q. And you did so in the ordinary 13:39:58<br/>6 course of your employment at Pfizer? 13:40:01<br/>7 A. Yes. 13:40:03<br/>8 MR. WEISS: I object to the form 13:40:03<br/>9 of the question. 13:40:04<br/>10 Q. And it's accurate that the 13:40:05<br/>11 twelve-month results for CLASS look 13:40:07<br/>12 different than the six-month results; 13:40:09<br/>13 correct? 13:40:11<br/>14 A. Well, I think that we've gone 13:40:12<br/>15 through the ways that they're different. 13:40:14<br/>16 Again, that does not detract from, in my 13:40:15<br/>17 view, the validity of the six-month 13:40:18<br/>18 results but clearly if I was designing 13:40:21<br/>19 another study, I would not want to have 13:40:24<br/>20 people asking what happens after six 13:40:27<br/>21 months and not have any data to say so. 13:40:29<br/>22 Q. And you agree with me the data 13:40:32<br/>23 looked different; correct? 13:40:35<br/>24 A. In the ways that we have 13:40:36<br/>25 discussed. And we've been through that. 13:40:38<br/>Page 215</p> |
| <p>1 E. Weiner<br/>2 Q. And the six-month data was more 13:40:40<br/>3 favorable to Celebrex than the entire 13:40:43<br/>4 study data; correct? 13:40:47<br/>5 A. Yes. 13:40:48<br/>6 (Whereupon, an e-mail dated 13:40:48<br/>7 April 8, 2001 was marked Plaintiff's 13:40:48<br/>8 Exhibit 177 for identification.) 13:41:01<br/>9 Q. I'm going to show you what I'm 13:41:01<br/>10 marking as Plaintiff's Exhibit 177. 13:41:09<br/>11 Could you please take a look at 13:41:27<br/>12 that document. 13:41:29<br/>13 MR. SAHAM: And for the record, 13:41:29<br/>14 Plaintiff's Exhibit 177 is a one-page 13:41:31<br/>15 e-mail chain bearing Bates numbers 13:41:34<br/>16 DEFS 00029027. And the top e-mail -- 13:41:38<br/>17 actually, the top e-mail is from Ethan 13:41:45<br/>18 Weiner to Steven W. Ryder dated 13:41:49<br/>19 April 8, 2001. 13:41:52<br/>20 Q. Do you recognize this document? 13:41:55<br/>21 A. Yes. 13:41:56<br/>22 Q. And what is it? 13:41:57<br/>23 A. It's an e-mail, a series of 13:41:58<br/>24 e-mails, I guess, from just bringing my 13:42:03<br/>25 boss up-to-date on the CLASS negotiations, 13:42:06<br/>Page 216</p>                                          | <p>1 E. Weiner<br/>2 label negotiations. 13:42:13<br/>3 Q. And who was involved in those 13:42:13<br/>4 negotiations? 13:42:15<br/>5 A. Well, it was various people from 13:42:16<br/>6 Pfizer and Pharmacia. I was not one of 13:42:18<br/>7 the ones directly involved. I do not 13:42:21<br/>8 recall if Leland was going to those or 13:42:23<br/>9 Mona or who was. 13:42:26<br/>10 Q. And again, here you're 13:42:28<br/>11 discussing differences between Vioxx and 13:42:29<br/>12 Celebrex; is that correct? 13:42:32<br/>13 A. Yes. 13:42:34<br/>14 Q. And one of the things as a 13:42:34<br/>15 positive you're pointing out is the 2.5 13:42:37<br/>16 percent increase of MIs, myo -- I can't 13:42:41<br/>17 even say, but those are heart problems; 13:42:49<br/>18 right? 13:42:50<br/>19 A. Myocardial infarctions. 13:42:50<br/>20 Where do you see that though? 13:42:50<br/>21 On the very top. 13:42:52<br/>22 Q. Yes. 13:42:52<br/>23 Do you see that? 13:42:52<br/>24 A. Yeah, let me just read it first. 13:42:53<br/>25 Q. Take as much time as you need. 13:42:55<br/>Page 217</p>                                                          |

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| <p>1 E. Weiner<br/>2 A. (Reviewing). 13:43:00<br/>3 Okay. 13:43:02<br/>4 Q. So you're pointing out that one 13:43:21<br/>5 of the things comparatively that Celebrex 13:43:23<br/>6 looked better with Vioxx with was the fact 13:43:26<br/>7 that there was a 2.5 increase in MIs with 13:43:28<br/>8 respect to Vioxx; correct? 13:43:33<br/>9 A. Right. It would be a little 13:43:34<br/>10 oversimplification to say Celebrex looks 13:43:37<br/>11 better than Vioxx. That would imply a 13:43:40<br/>12 direct comparison. But what I was saying 13:43:43<br/>13 is that compared to the -- when you look 13:43:47<br/>14 at Celebrex versus the two NSAIDs it 13:43:48<br/>15 compared itself to in CLASS, that those 13:43:51<br/>16 events were at a similar level and in fact 13:43:52<br/>17 some of them even favorable for Celebrex. 13:43:57<br/>18 When you look at VIGOR, a 13:43:57<br/>19 separate study now, so you're comparing 13:44:01<br/>20 Vioxx to the one NSAID naproxen it went 13:44:05<br/>21 against, they had two and a half times the 13:44:06<br/>22 number of MIs that naproxen had. 13:44:08<br/>23 So GI issues aside, this is 13:44:12<br/>24 purely cardiac, that we had an attractive 13:44:15<br/>25 safety profile relative to the 13:44:19<br/>Page 218</p>                                                                     | <p>1 E. Weiner<br/>2 nonsteroidals and Vioxx did not. 13:44:21<br/>3 Q. And you discussed these 13:44:24<br/>4 comparisons between Vioxx and Celebrex in 13:44:26<br/>5 this e-mail which you sent in the ordinary 13:44:29<br/>6 scope of your employment at Pfizer? 13:44:31<br/>7 MR. WEISS: I object to the form 13:44:32<br/>8 of the question. 13:44:33<br/>9 A. Yes. 13:44:34<br/>10 Q. And at the bottom of the page in 13:44:35<br/>11 the e-mail you're sending to your boss on 13:44:43<br/>12 April 1, 2001 at 10:58 a.m., you write, 13:44:45<br/>13 "the warning looks at present just like if 13:44:49<br/>14 not worse than the standard NSAID GI 13:44:52<br/>15 warning. This was what I was afraid of as 13:44:55<br/>16 soon as we knew we didn't make our primary 13:44:59<br/>17 endpoint. Hopefully, we'll be able to 13:45:02<br/>18 soften this somewhat with negotiations but 13:45:05<br/>19 probably not." 13:45:07<br/>20 What are you saying there? 13:45:07<br/>21 A. The original celecoxib label 13:45:09<br/>22 quotes -- okay, well, I'll go back further 13:45:13<br/>23 in history. 13:45:16<br/>24 The standard nonsteroidal GI 13:45:16<br/>25 warning talks about I believe something on 13:45:21<br/>Page 219</p> |
| <p>1 E. Weiner<br/>2 the order of a four percent rate of ulcers 13:45:24<br/>3 in NSAIDs. No matter what NSAID you were, 13:45:27<br/>4 the warning says, whether it's going to 13:45:27<br/>5 happen or not, roughly four percent. 13:45:29<br/>6 When we got the original label 13:45:32<br/>7 for celecoxib, the number they put in that 13:45:34<br/>8 warning was the actual number that was 13:45:37<br/>9 observed in the celecoxib database for 13:45:40<br/>10 celecoxib prior to CLASS in the NDA 13:45:44<br/>11 database. That was lower than four 13:45:48<br/>12 percent. So the warning, rather than 13:45:51<br/>13 saying four percent, had a lower number in 13:45:53<br/>14 there. And it was unique -- I don't know 13:45:56<br/>15 if Vioxx had a similar label but maybe it 13:45:58<br/>16 did. But other than that, those labels 13:45:58<br/>17 were unique. 13:46:00<br/>18 When we were negotiating CLASS 13:46:02<br/>19 label in the warning section, regardless 13:46:05<br/>20 of any of the other stuff, FDA reverted 13:46:08<br/>21 back to the standard number that they give 13:46:11<br/>22 to all NSAIDs. And again, in the -- to 13:46:14<br/>23 get labeling, regardless of what is the 13:46:20<br/>24 outcome of the clinical trial, there's 13:46:25<br/>25 much to be learned whether or not you meet 13:46:28<br/>Page 220</p> | <p>1 E. Weiner<br/>2 your primary endpoint, but generally for 13:46:30<br/>3 labeling you need to meet your primary 13:46:33<br/>4 endpoint to get that in the label 13:46:33<br/>5 someplace. So having failed to meet that 13:46:37<br/>6 endpoint, one concern was that FDA would 13:46:39<br/>7 default back to the original standard 13:46:44<br/>8 boilerplate number which is, in fact, what 13:46:46<br/>9 they did. 13:46:49<br/>10 Q. So as a result of CLASS, the 13:46:49<br/>11 safety label got worse for Celebrex as 13:46:50<br/>12 opposed to better? 13:46:54<br/>13 MR. WEISS: I object to the form 13:46:55<br/>14 of the question. 13:46:56<br/>15 A. Overall I think it got better, 13:46:57<br/>16 it certainly got more informative which I 13:46:59<br/>17 think is a good thing, but that particular 13:47:03<br/>18 part of it got worse. 13:47:05<br/>19 Q. So this particular part that 13:47:06<br/>20 you're addressing in the e-mail, as a 13:47:07<br/>21 result of CLASS, you got a safety 13:47:07<br/>22 downgrade as opposed to a safety upgrade? 13:47:08<br/>23 MR. WEISS: I object to the form 13:47:11<br/>24 of the question. 13:47:11<br/>25 A. In that one piece. I think we 13:47:12<br/>Page 221</p>         |

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| <p>1 E. Weiner<br/>2 netted out with an upgrade. 13:47:14<br/>3 Q. But with respect to this 13:47:17<br/>4 issue -- 13:47:18<br/>5 A. But with respect to that one 13:47:18<br/>6 sentence and warning, then this was less 13:47:22<br/>7 favorable than what was there before. 13:47:25<br/>8 Q. And less favorable to Celebrex's 13:47:26<br/>9 safety profile? 13:47:38<br/>10 MR. WEISS: I object to the form 13:47:38<br/>11 of the question. 13:47:38<br/>12 MR. SAHAM: I'll ask a better 13:47:38<br/>13 question. 13:47:38<br/>14 Q. You're saying -- when you say 13:47:38<br/>15 less favorable, you're talking about on 13:47:38<br/>16 the GI side it makes Celebrex sound worse 13:47:38<br/>17 than the other label did? 13:47:38<br/>18 A. In the warning part. As I said, 13:47:40<br/>19 I think we netted out better on GI and 13:47:42<br/>20 everything else, but the netting out is 13:47:43<br/>21 some things are better and some are not 13:47:43<br/>22 better and this is not better. 13:47:48<br/>23 Q. And all I'm getting out when 13:47:48<br/>24 you're using the term "better" and 13:47:51<br/>25 "worse," worse means the label was saying 13:47:53<br/>Page 222</p>                         | <p>1 E. Weiner<br/>2 it was less safe? 13:47:55<br/>3 A. Less favorable looking. 13:47:55<br/>4 MR. WEISS: Are you going to need 13:48:01<br/>5 a bathroom break? 13:48:03<br/>6 MR. SAHAM: Sure, we can take a 13:48:04<br/>7 break. 13:48:06<br/>8 THE VIDEOGRAPHER: Please stand 13:48:07<br/>9 by. 13:48:08<br/>10 We are going off the record. 13:48:08<br/>11 The time is 1:46 p.m. 13:48:10<br/>12 This is the end of tape number 13:48:12<br/>13 three. 13:48:14<br/>14 (Whereupon a break was taken) 13:48:14<br/>15 THE VIDEOGRAPHER: We are back on 13:48:15<br/>16 the record. The time is 1:53 p.m. 13:54:55<br/>17 This is the beginning of tape 13:54:58<br/>18 number four. 13:55:00<br/>19 Q. Dr. Weiner, do you know who 13:55:00<br/>20 Goran Ando is? 13:55:04<br/>21 A. Yes. 13:55:05<br/>22 Q. Who is he? 13:55:06<br/>23 A. He at the time was the head of 13:55:07<br/>24 R&amp;D for Pharmacia. 13:55:10<br/>25 Q. And did you have any 13:55:12<br/>Page 223</p>                                                                                                                                                                                     |
| <p>1 E. Weiner<br/>2 interactions with him? 13:55:13<br/>3 A. Quite limited. 13:55:14<br/>4 Q. And what interactions do you 13:55:16<br/>5 recall with Mr. Ando or Dr. Ando? 13:55:18<br/>6 A. We were at the same meetings 13:55:19<br/>7 together. For instance, at the time of 13:55:23<br/>8 the merger, there was a big portfolio 13:55:26<br/>9 review or everything in the two -- well, 13:55:29<br/>10 particularly in Pharmacia's portfolio. He 13:55:31<br/>11 was there. He may have been at some of 13:55:31<br/>12 the -- actually, there were no alliance 13:55:38<br/>13 meetings. Yeah, he may have been at some 13:55:42<br/>14 of the appliance meetings for the COX-2 13:55:44<br/>15 alliance. He probably was at some of 13:55:48<br/>16 those rehearsals. But I don't recall the 13:55:52<br/>17 exact context. 13:55:56<br/>18 Q. So he may have been at some of 13:55:57<br/>19 the operations committee meetings? 13:55:59<br/>20 A. Possibly. 13:56:00<br/>21 Q. And do you recall ever having 13:56:00<br/>22 any discussions with him about the CLASS 13:56:04<br/>23 data? 13:56:05<br/>24 A. I recall participating in 13:56:06<br/>25 teleconferences about the CLASS 13:56:12<br/>Page 224</p> | <p>1 E. Weiner<br/>2 publication, not discussions about the 13:56:16<br/>3 data per se. 13:56:19<br/>4 Q. What do you mean by the CLASS 13:56:20<br/>5 publication? 13:56:23<br/>6 A. There were a series of 13:56:23<br/>7 teleconferences that were held I think 13:56:27<br/>8 regarding the -- after the Juni editorial 13:56:31<br/>9 in terms of, you know, what the company's 13:56:38<br/>10 position was. 13:56:42<br/>11 Q. And Mr. Ando or Dr. Ando express 13:56:42<br/>12 an opinion at those meetings? 13:56:46<br/>13 A. I don't recall him expressing 13:56:49<br/>14 any clear opinions. It was I think more 13:56:51<br/>15 tactical types of things. I very vaguely 13:56:54<br/>16 recall those. 13:56:58<br/>17 Q. What do you mean by tactical? 13:56:58<br/>18 A. Well, in terms of, you know, the 13:57:00<br/>19 company's response to the editorial and 13:57:02<br/>20 what that should look like, things of that 13:57:05<br/>21 nature. 13:57:09<br/>22 Q. Did you have any opinion on that 13:57:09<br/>23 issue? 13:57:10<br/>24 A. I was pretty peripherally 13:57:11<br/>25 involved. I called into those because I 13:57:14<br/>Page 225</p> |



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| <p>1 E. Weiner<br/>2 was in the invitation list, but I was 13:57:15<br/>3 usually multi-tasking. 13:57:15<br/>4 Q. Did anyone express an opinion 13:57:17<br/>5 that Dr. Juni was correct in his 13:57:18<br/>6 editorial? 13:57:21<br/>7 A. Not that I recall. 13:57:22<br/>8 Q. Did anyone express concern about 13:57:23<br/>9 the editorial? 13:57:30<br/>10 A. I think people were concerned 13:57:31<br/>11 that it portrayed the company in a bad 13:57:32<br/>12 light, obviously, and that is what they 13:57:36<br/>13 were trying to respond to. 13:57:37<br/>14 Q. And you referenced earlier a 13:57:38<br/>15 meeting you had with Dr. Hassan, Fred 13:57:41<br/>16 Hassan, or that you were at where he was 13:57:44<br/>17 at? 13:57:48<br/>18 A. Yeah. I had no direct 13:57:48<br/>19 interaction with him. 13:57:50<br/>20 Q. What do you remember about that 13:57:51<br/>21 meeting? 13:57:53<br/>22 A. Not much, other than that he was 13:57:53<br/>23 there. I don't even know what we 13:57:53<br/>24 discussed. 13:57:53<br/>25 Q. Was it a CLASS meeting? 13:57:53</p> <p style="text-align: right;">Page 226</p>        | <p>1 E. Weiner<br/>2 A. I don't think so but I don't 13:57:56<br/>3 remember. 13:57:58<br/>4 Q. And what about Carrie Cox, any 13:57:58<br/>5 memories of interactions with her? 13:58:01<br/>6 A. Nothing substantive. Again, 13:58:03<br/>7 that was at a couple of meetings. I don't 13:58:09<br/>8 recall her saying anything. Nothing she 13:58:11<br/>9 said sticks in my memory. 13:58:14<br/>10 Q. Do you recall her being at any 13:58:16<br/>11 meetings involving CLASS? 13:58:18<br/>12 A. I neither recall her being or 13:58:21<br/>13 not being at them. 13:58:27<br/>14 Q. And could the meeting you were 13:58:27<br/>15 at with Hassan had to do with -- could 13:58:30<br/>16 that have had to do with CLASS? 13:58:31<br/>17 MR. WEISS: I object to the form 13:58:31<br/>18 of the question. 13:58:32<br/>19 Q. Celebrix? 13:58:33<br/>20 A. It's conjecture. It might have 13:58:33<br/>21 but I don't -- I don't think it did just 13:58:40<br/>22 because it was with McKinnell and CEOs 13:58:41<br/>23 meeting and usually they -- I don't think 13:58:49<br/>24 they would have talked about something 13:58:49<br/>25 that specific, but I don't recall. 13:58:50</p> <p style="text-align: right;">Page 227</p> |
| <p>1 E. Weiner<br/>2 (Whereupon, an e-mail dated 13:58:50<br/>3 May 10, 2001 was marked Plaintiff's 13:58:50<br/>4 Exhibit 178 for identification.) 13:58:54<br/>5 Q. I want to show you what I'm 13:58:54<br/>6 marking as Plaintiff's Exhibit 178. 13:58:55<br/>7 Could you please take a look at 13:59:18<br/>8 Plaintiff's Exhibit 178. 13:59:20<br/>9 MR. SAHAM: Which, for the 13:59:22<br/>10 record, is a multiple-page document 13:59:23<br/>11 bearing Bates numbers DEFS 00801105 13:59:28<br/>12 through 1132. And the cover e-mail is 13:59:38<br/>13 from Ethan Weiner to Steven W. Ryder 13:59:43<br/>14 dated May 10, 2001. 13:59:49<br/>15 Q. I ask you if you recognize this 13:59:50<br/>16 document. 13:59:51<br/>17 A. Yes. 13:59:51<br/>18 Q. And what is it? 13:59:52<br/>19 A. It's just me updating Steve 13:59:53<br/>20 Ryder about the label negotiations for 13:59:56<br/>21 CLASS. 13:59:58<br/>22 Q. And you updated him in the 13:59:59<br/>23 ordinary scope of your employment? 14:00:02<br/>24 A. Yes. 14:00:04<br/>25 Q. And you drafted this e-mail in 14:00:04</p> <p style="text-align: right;">Page 228</p> | <p>1 E. Weiner<br/>2 the ordinary scope of your employment? 14:00:10<br/>3 MR. WEISS: I object to the form 14:00:11<br/>4 of the question. 14:00:12<br/>5 A. Yes, just as a cover for Mona's 14:00:12<br/>6 e-mail. 14:00:19<br/>7 Q. And what does Mona's e-mail do? 14:00:21<br/>8 MR. WEISS: I object to the form 14:00:23<br/>9 of the question. 14:00:24<br/>10 MR. SAHAM: I'll ask that 14:00:24<br/>11 differently. 14:00:26<br/>12 Q. Mona Wahba had sent you an 14:00:26<br/>13 attachment which you then forwarded on to 14:00:28<br/>14 Dr. Ryder? 14:00:31<br/>15 A. She summarizes what's in the 14:00:32<br/>16 attachment. 14:00:34<br/>17 Q. And what's in the attachment? 14:00:35<br/>18 A. The attachment is one of the 14:00:45<br/>19 versions of the draft label, I guess FDA's 14:00:45<br/>20 most recent proposal. 14:00:45<br/>21 Q. So FDA sent a proposed label and 14:00:45<br/>22 then the company commented on it? 14:00:48<br/>23 A. That's correct. 14:00:50<br/>24 Q. And you write in your e-mail to 14:00:50<br/>25 Dr. Ryder, "a significant step backwards 14:00:53</p> <p style="text-align: right;">Page 229</p>                                                                                     |



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| <p>1 E. Weiner<br/>2 because we no longer get to quote the rate 14:00:56<br/>3 of complicated ulcers plus systematic 14:00:59<br/>4 ulcers in which we were better than 14:01:04<br/>5 ibuprofen although not better than 14:01:05<br/>6 diclofenac." 14:01:07<br/>7 What are you referring to there? 14:01:07<br/>8 A. I guess in one of the earlier 14:01:09<br/>9 labels we had for the CLASS study the rate 14:01:12<br/>10 of complicated and symptomatic ulcers for 14:01:19<br/>11 celecoxib and then the various comparators 14:01:23<br/>12 which I guess from the context of this was 14:01:27<br/>13 split up by the specific NSAID and 14:01:30<br/>14 apparently that's no longer in this label. 14:01:35<br/>15 Q. And again, that would be less 14:01:38<br/>16 favorable for Celebrex? 14:01:39<br/>17 A. Yes. 14:01:39<br/>18 MR. WEISS: I object to the form 14:01:39<br/>19 of the question. 14:01:40<br/>20 Q. And dropping down a few 14:01:41<br/>21 sentences, you write, "I had a call from 14:01:44<br/>22 Joe Feczko before I even had a chance to 14:01:47<br/>23 read this because Fred Hassan had told 14:01:49<br/>24 McKinnell negotiations were not going well 14:01:49<br/>25 and Hank called Joe." 14:01:53<br/>Page 230</p> | <p>1 E. Weiner<br/>2 What are you referring to there? 14:01:54<br/>3 A. Well, I guess from his side -- 14:01:56<br/>4 and again, just to paraphrase what I said 14:02:00<br/>5 here, is that things went up this food 14:02:05<br/>6 chain in Pharmacia to the CEO who calls up 14:02:08<br/>7 our CEO and says, well, I hear these label 14:02:12<br/>8 negotiations aren't good. He gets Joe 14:02:14<br/>9 Feczko on the phone and says Joe, what's 14:02:16<br/>10 the deal. Joe hadn't heard yet so he 14:02:18<br/>11 calls me up and I haven't even had a 14:02:21<br/>12 chance to read this yet. It's a typical 14:02:22<br/>13 corporate event, I suppose. 14:02:26<br/>14 Q. Would the executive management 14:02:28<br/>15 committee have been given a summary of the 14:02:30<br/>16 CLASS results shortly after unblinding? 14:02:34<br/>17 MR. WEISS: I object to the form 14:02:38<br/>18 of the question. 14:02:39<br/>19 A. Again, I would guess that it 14:02:40<br/>20 would be likely, but I can't -- I have no 14:02:44<br/>21 factual recollection of him getting it but 14:02:47<br/>22 I assume that they did. 14:02:50<br/>23 Q. Celebrex was one of Pharmacia's 14:02:52<br/>24 largest drugs; correct? 14:02:54<br/>25 A. Yes. I'm pretty sure that they 14:02:55<br/>Page 231</p> |
| <p>1 E. Weiner<br/>2 got it. Again, do I ironclad remember 14:02:59<br/>3 that it? No. Do I have a document that 14:03:02<br/>4 proves it? No. 14:03:03<br/>5 Q. And why are you sure that they 14:03:03<br/>6 got it? 14:03:06<br/>7 MR. WEISS: I object to the form 14:03:06<br/>8 of the question. It mischaracterizes 14:03:07<br/>9 the witness' testimony. 14:03:07<br/>10 A. It would reasonable that they 14:03:07<br/>11 got it. 14:03:08<br/>12 Q. And why? 14:03:08<br/>13 A. Because for the reasons that you 14:03:08<br/>14 said, it was an important study. 14:03:09<br/>15 Q. And it was an important drug for 14:03:12<br/>16 Pharmacia? 14:03:13<br/>17 A. Yes. 14:03:14<br/>18 (Whereupon, an e-mail dated 14:03:40<br/>19 January 18, 2001 was marked 14:03:40<br/>20 Plaintiff's Exhibit 179 14:03:40<br/>21 for identification.) 14:03:41<br/>22 Q. I want to show you what I'm 14:03:41<br/>23 marking as Plaintiff's Exhibit 179. 14:03:43<br/>24 Could you please take a look at 14:04:00<br/>25 Plaintiff's Exhibit 179. 14:04:02<br/>Page 232</p>                                                                                                                                                                                   | <p>1 E. Weiner<br/>2 MR. SAHAM: For the record, 14:04:04<br/>3 Plaintiff's Exhibit 179 bears Bates 14:04:05<br/>4 numbers DEFS 00776376 through 384. 14:04:08<br/>5 Q. And I'd ask you if you recognize 14:04:21<br/>6 this document. 14:04:24<br/>7 A. Not really because I don't know 14:04:25<br/>8 who the author is and I'm not one of the 14:04:27<br/>9 recipients. It looks like it's all 14:04:32<br/>10 Pharmacia people on the to list. 14:04:35<br/>11 Q. And looking at the second page 14:04:37<br/>12 of the document, it says, "CLASS senior 14:04:38<br/>13 management rehearsal January 17, 2001?" 14:04:41<br/>14 A. Okay. 14:04:44<br/>15 So it was one of the rehearsals 14:04:45<br/>16 then which I probably was at, but I'm not 14:04:49<br/>17 one of the recipients. 14:04:52<br/>18 Q. Looking at the second page of 14:04:54<br/>19 the summary it says, "Weiner: Was the 14:04:57<br/>20 cutoff" -- 14:05:01<br/>21 MR. SAHAM: Strike that. 14:05:01<br/>22 Q. It says, "Weiner: Was the cutoff 14:05:02<br/>23 at the first six months a naproxen cutoff 14:05:06<br/>24 or was that determined after the results 14:05:06<br/>25 were known." 14:05:11<br/>Page 233</p>                                                                                                         |

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| <p>1 E. Weiner</p> <p>2 Could that have been a question 14:05:11</p> <p>3 you asked at this rehearsal? 14:05:13</p> <p>4 A. Where do you see that? 14:05:15</p> <p>5 Q. Do you see where your name is 14:05:17</p> <p>6 listed maybe like the fifth line down 14:05:20</p> <p>7 on -- 14:05:22</p> <p>8 A. The first page? 14:05:23</p> <p>9 Q. Second page. 14:05:25</p> <p>10 Do you see your name there? 14:05:27</p> <p>11 A. Yes, yes. 14:05:28</p> <p>12 Q. Could that have been a question 14:05:29</p> <p>13 you asked at the rehearsal? 14:05:31</p> <p>14 MR. WEISS: Why don't you ask him 14:05:34</p> <p>15 if it was. Could it? Anything is 14:05:35</p> <p>16 possible. 14:05:37</p> <p>17 A. The document would suggest that, 14:05:37</p> <p>18 so yes, it would be very plausible that I 14:05:39</p> <p>19 did. 14:05:41</p> <p>20 Q. And what does that mean? 14:05:41</p> <p>21 A. Well, again, the rehearsals we 14:05:43</p> <p>22 tried to get the presenter to deal with 14:05:48</p> <p>23 all of the tough questions and one of the 14:05:50</p> <p>24 tough questions was where did the 14:05:52</p> <p>25 six-month cutoff come from, how can you 14:05:55</p> <p style="text-align: right;">Page 234</p>                                                                                                                                | <p>1 E. Weiner</p> <p>2 justify it. Somebody was likely to ask 14:06:00</p> <p>3 that. 14:06:02</p> <p>4 Should I finish? 14:06:04</p> <p>5 Q. Go ahead. 14:06:05</p> <p>6 A. Somebody was likely to ask that 14:06:06</p> <p>7 at the advisory committee so can these 14:06:08</p> <p>8 people who are practicing for it, how are 14:06:08</p> <p>9 they going to address that, what are they 14:06:11</p> <p>10 going to say. 14:06:12</p> <p>11 Q. My question's a little bit 14:06:13</p> <p>12 simpler. 14:06:13</p> <p>13 What's a naproxen cutoff? 14:06:14</p> <p>14 A. That's a typo. I have no idea 14:06:17</p> <p>15 what they're saying. 14:06:19</p> <p>16 Q. So naproxen is not a word that 14:06:20</p> <p>17 you're familiar with? 14:06:23</p> <p>18 A. Oh, you know what? All right. 14:06:26</p> <p>19 And again, it's guesswork on my part 14:06:28</p> <p>20 because it's a typo and I suspect they 14:06:33</p> <p>21 meant a priori. 14:06:39</p> <p>22 Q. And what did that mean? 14:06:40</p> <p>23 A. Beforehand. 14:06:42</p> <p>24 Q. So it was not prespecified in 14:06:43</p> <p>25 the protocol that there was going to be a 14:06:45</p> <p style="text-align: right;">Page 235</p>                                                                                                                                  |
| <p>1 E. Weiner</p> <p>2 six-month analysis; correct? 14:06:47</p> <p>3 A. Right, we've established that. 14:06:55</p> <p>4 I was asking the speaker to 14:06:55</p> <p>5 justify the six-month analysis because 14:06:55</p> <p>6 that's a likely question to come up at the 14:06:57</p> <p>7 advisory committee and I felt there was 14:07:01</p> <p>8 reasonable justification for it, but 14:07:03</p> <p>9 people presenting need to be able to 14:07:06</p> <p>10 justify these things. 14:07:09</p> <p>11 Q. And that was just a likely 14:07:10</p> <p>12 question, a question that was likely the 14:07:12</p> <p>13 FDA would ask? 14:07:13</p> <p>14 A. Right. Again, as I said 14:07:15</p> <p>15 earlier, in these things it's our job to 14:07:18</p> <p>16 put ourselves in an adversarial role and 14:07:18</p> <p>17 ask all the tough questions. 14:07:21</p> <p>18 Q. And was it likely the FDA was 14:07:23</p> <p>19 going to ask that question because the 14:07:25</p> <p>20 protocol said there was to be to be a 14:07:25</p> <p>21 fifty-two-week treatment period and if 14:07:28</p> <p>22 you're only going to use six months or 14:07:30</p> <p>23 twenty-six weeks of data they would want 14:07:32</p> <p>24 to know why? 14:07:34</p> <p>25 MR. WEISS: I object to the form 14:07:35</p> <p style="text-align: right;">Page 236</p> | <p>1 E. Weiner</p> <p>2 of the question. 14:07:36</p> <p>3 A. At the time I felt it likely 14:07:36</p> <p>4 that one of the advisory committee members 14:07:39</p> <p>5 would ask that. And whether I felt it 14:07:41</p> <p>6 likely or not, it was a question that 14:07:43</p> <p>7 could be asked. Generally the advisory 14:07:43</p> <p>8 committee members ask questions, not FDA, 14:07:44</p> <p>9 and it was one of the possible questions. 14:07:48</p> <p>10 One tries to throw at them the whole 14:07:54</p> <p>11 universe of possible questions so they can 14:07:57</p> <p>12 answer anything they get. 14:08:00</p> <p>13 (Whereupon, an e-mail dated 14:08:00</p> <p>14 April 8, 2001 was marked Plaintiff's 14:08:00</p> <p>15 Exhibit 180 for identification.) 14:08:11</p> <p>16 Q. I'm going to show you what I'm 14:08:11</p> <p>17 marking Plaintiff's Exhibit 180. 14:08:12</p> <p>18 Could you please take a look at 14:08:39</p> <p>19 that document. 14:08:41</p> <p>20 MR. SAHAM: And for the record, 14:08:41</p> <p>21 Plaintiff's Exhibit 180 bears Bates 14:08:42</p> <p>22 numbers DEFS 00029021 through 026. 14:08:45</p> <p>23 And the cover e-mail is from Ethan 14:08:54</p> <p>24 Weiner to Steven W. Ryder dated 14:08:57</p> <p>25 April 8, 2001. 14:09:00</p> <p style="text-align: right;">Page 237</p> |

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| <p>1 E. Weiner</p> <p>2 Q. And we may have looked at the 14:09:01</p> <p>3 text of this e-mail in Exhibit 177, but I 14:09:28</p> <p>4 just quickly ask you if you recognize this 14:09:31</p> <p>5 document. 14:09:33</p> <p>6 A. Yes. 14:09:33</p> <p>7 Q. And what's attached or what is 14:09:34</p> <p>8 this document? 14:09:39</p> <p>9 A. This is -- so the attached 14:09:40</p> <p>10 document appears to be a summary, which 14:09:43</p> <p>11 the cover e-mail says it's produced by 14:09:47</p> <p>12 Pharmacia, of what's different about or 14:09:50</p> <p>13 the changes in the most recent round of 14:09:53</p> <p>14 labels back and forth or back from FDA. 14:09:57</p> <p>15 Q. And you would have sent this to 14:09:59</p> <p>16 Dr. Ryder on or about April 8, 2001? 14:10:01</p> <p>17 A. Yes. 14:10:05</p> <p>18 Q. And you would have done so in 14:10:06</p> <p>19 the ordinary course of your employment at 14:10:08</p> <p>20 Pfizer? 14:10:11</p> <p>21 MR. WEISS: I object to the form 14:10:11</p> <p>22 of the question. 14:10:13</p> <p>23 A. Yes. 14:10:13</p> <p>24 Q. Was it clear after unblinding 14:10:13</p> <p>25 when it became apparent that the primary 14:10:16</p> <p style="text-align: right;">Page 238</p>                               | <p>1 E. Weiner</p> <p>2 endpoint was not made that you weren't 14:10:19</p> <p>3 going to get the safety upgrade that was 14:10:21</p> <p>4 hoped for as a result of CLASS when it was 14:10:24</p> <p>5 designed? 14:10:27</p> <p>6 MR. WEISS: I object to the form 14:10:27</p> <p>7 of the question. 14:10:29</p> <p>8 A. It was clear I think that the 14:10:29</p> <p>9 warning would not be rescinded. Whether 14:10:33</p> <p>10 there was going to be more favorable 14:10:36</p> <p>11 labeling or not or how much more favorable 14:10:39</p> <p>12 I think was not clear at all. 14:10:43</p> <p>13 Q. When you say rescinded, you mean 14:10:44</p> <p>14 they weren't going to remove the GI 14:10:44</p> <p>15 warning that all other NSAIDs had? 14:10:47</p> <p>16 A. Right, that's correct. 14:10:50</p> <p>17 Q. And if that warning was removed, 14:10:50</p> <p>18 it would have been a commercial advantage 14:10:52</p> <p>19 to the companies? 14:10:54</p> <p>20 A. Yes. 14:10:55</p> <p>21 Q. Do you ever recall being at a 14:10:55</p> <p>22 meeting where anyone estimated the 14:10:59</p> <p>23 monetary benefit of such a warning 14:11:01</p> <p>24 removal? 14:11:04</p> <p>25 A. I don't recall absolutely being 14:11:05</p> <p style="text-align: right;">Page 239</p> |
| <p>1 E. Weiner</p> <p>2 at one. I'm sure that I probably was. I 14:11:12</p> <p>3 don't remember what they were. 14:11:15</p> <p>4 Q. Do you recall it being discussed 14:11:15</p> <p>5 that it would be worth approximately \$300 14:11:17</p> <p>6 million a year to the company? 14:11:20</p> <p>7 A. I don't recall what they came up 14:11:21</p> <p>8 with. 14:11:23</p> <p>9 Q. Would that number surprise you? 14:11:23</p> <p>10 A. No. 14:11:25</p> <p>11 (Whereupon, an e-mail dated 14:11:30</p> <p>12 April 3, 2001 was marked Plaintiff's 14:11:30</p> <p>13 Exhibit 181 for identification.) 14:11:31</p> <p>14 Q. I want to show you what I'm 14:11:31</p> <p>15 marking as Plaintiff's Exhibit 181. 14:11:32</p> <p>16 Could you please take a look at 14:11:56</p> <p>17 that document. 14:11:58</p> <p>18 MR. SAHAM: And for the record, 14:12:00</p> <p>19 Bates number 181 -- I'm sorry, for the 14:12:01</p> <p>20 record, Exhibit 181 bears Bates 14:12:05</p> <p>21 numbers DEFS 00125726 through 730. 14:12:08</p> <p>22 The tap e-mail is from Peter Corr, C O 14:12:21</p> <p>23 R R, to Ethan Weiner, Steven W. Ryder, 14:12:25</p> <p>24 and Mona Wahba, and it's dated 14:12:29</p> <p>25 April 3, 2001. 14:12:33</p> <p style="text-align: right;">Page 240</p> | <p>1 E. Weiner</p> <p>2 Q. Who is Peter Corr? 14:12:34</p> <p>3 A. Head of R&amp;D at the time. The 14:12:35</p> <p>4 head of development, I'm sorry. 14:12:41</p> <p>5 Q. And he was a senior Pfizer 14:12:43</p> <p>6 executive? 14:12:46</p> <p>7 A. Yes. 14:12:46</p> <p>8 Q. And he sent you this e-mail on 14:12:49</p> <p>9 or about April 3, 2001? 14:12:54</p> <p>10 A. He sent it to Mark, actually, 14:12:56</p> <p>11 and copied me. 14:13:00</p> <p>12 Q. And you would have received it 14:13:01</p> <p>13 in the ordinary scope of your employment 14:13:02</p> <p>14 at the company? 14:13:04</p> <p>15 A. Yes. 14:13:05</p> <p>16 MR. WEISS: I object to the form 14:13:05</p> <p>17 of the question. 14:13:06</p> <p>18 Q. And what was Mr. or Dr. Corr's 14:13:06</p> <p>19 involvement in the Celebrex development? 14:13:12</p> <p>20 A. Not intense or consistent. But 14:13:16</p> <p>21 as head of development with labeling 14:13:20</p> <p>22 negotiations, he occasionally would want 14:13:23</p> <p>23 to know what was going on. 14:13:26</p> <p>24 Q. And Mark Fletcher worked for 14:13:27</p> <p>25 you? 14:13:29</p> <p style="text-align: right;">Page 241</p>                                                                                                          |

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| <p>1 E. Weiner</p> <p>2 A. Right. 14:13:29</p> <p>3 Q. And he had sent an e-mail to 14:13:30</p> <p>4 Peter Corr on April 2, 2001 in which you 14:13:35</p> <p>5 were cc'd? 14:13:40</p> <p>6 A. Yes. 14:13:40</p> <p>7 Q. And he wrote, "we transmitted 14:13:40</p> <p>8 your request to PHA but after careful 14:13:44</p> <p>9 consideration the team felt it was still 14:13:49</p> <p>10 best not to include the ibuprofen data 14:13:51</p> <p>11 here because to do so would have also 14:13:55</p> <p>12 required inclusion of the diclofenac 14:13:58</p> <p>13 ulceration rate which was no different 14:14:01</p> <p>14 than Celebrex." 14:14:13</p> <p>15 Do you see that? 14:14:13</p> <p>16 A. How far down the page? 14:14:13</p> <p>17 Q. It's in the middle of the page 14:14:13</p> <p>18 in Dr. Fletcher's e-mail to Dr. Corr. 14:14:14</p> <p>19 A. I see it. 14:14:18</p> <p>20 Q. And you would have received that 14:14:19</p> <p>21 in the ordinary course of your employment 14:14:20</p> <p>22 at Pfizer? 14:14:23</p> <p>23 A. Yes. 14:14:24</p> <p>24 MR. WEISS: I object to the form 14:14:25</p> <p>25 of the question. 14:14:25</p> <p>Page 242</p>                                                                               | <p>1 E. Weiner</p> <p>2 Q. Apparently, at least from the 14:14:26</p> <p>3 text of this e-mail, Dr. Corr wanted to 14:14:28</p> <p>4 illustrate more in the FDA warning label 14:14:30</p> <p>5 that in CLASS Celebrex did better than 14:14:35</p> <p>6 ibuprofen? 14:14:40</p> <p>7 A. Yes. 14:14:41</p> <p>8 Q. And that's something you said, 14:14:41</p> <p>9 in concert with also referencing the 14:14:46</p> <p>10 pooled data, would be misleading? 14:14:52</p> <p>11 A. Without putting in diclofenac as 14:14:56</p> <p>12 well. 14:14:58</p> <p>13 Q. Because Celebrex showed no 14:14:58</p> <p>14 difference from diclofenac? 14:15:02</p> <p>15 A. Right. 14:15:03</p> <p>16 Q. And pursuant to the protocol, 14:15:03</p> <p>17 you couldn't make a claim against either 14:15:06</p> <p>18 of the two drugs individually if you 14:15:10</p> <p>19 didn't beat the combined pool first? 14:15:12</p> <p>20 MR. WEISS: I object to the form 14:15:17</p> <p>21 of the question. 14:15:19</p> <p>22 A. Well, that's one reason. The 14:15:20</p> <p>23 other reason is just fair balance. 14:15:22</p> <p>24 (Whereupon, an e-mail dated 14:15:39</p> <p>25 September 5, 2001 was marked 14:15:39</p> <p>Page 243</p>                                                                                 |
| <p>1 E. Weiner</p> <p>2 Plaintiff's Exhibit 182 14:15:39</p> <p>3 for identification.) 14:15:41</p> <p>4 Q. I want to show you what I'm 14:15:41</p> <p>5 marking Plaintiff's Exhibit 182. 14:15:42</p> <p>6 Do you know Lee Simon? 14:15:47</p> <p>7 A. Yes. 14:15:50</p> <p>8 Q. What did you think about him? 14:15:50</p> <p>9 A. Well, I had mixed feelings about 14:15:52</p> <p>10 him. I thought he was a very bright guy. 14:15:55</p> <p>11 I had had earlier dealings with him on 14:15:55</p> <p>12 something unrelated to Celebrex where I 14:15:59</p> <p>13 found him to be inconsistent in his 14:16:00</p> <p>14 approach to things. 14:16:02</p> <p>15 Q. Do you think he was dishonest? 14:16:05</p> <p>16 A. Not frankly dishonest, but I 14:16:08</p> <p>17 think he would change his views depending 14:16:11</p> <p>18 upon circumstances. 14:16:15</p> <p>19 Q. And one of the circumstances if 14:16:15</p> <p>20 somebody would pay him would he change his 14:16:18</p> <p>21 views? 14:16:22</p> <p>22 A. I don't think it was that 14:16:22</p> <p>23 direct, but he did want to I think 14:16:24</p> <p>24 generally please the people that he was 14:16:27</p> <p>25 consulting with or working with. 14:16:30</p> <p>Page 244</p> | <p>1 E. Weiner</p> <p>2 Q. And one of those entities he was 14:16:32</p> <p>3 consulting for was Pharmacia during this 14:16:34</p> <p>4 time frame? 14:16:38</p> <p>5 A. Right, but I had very little 14:16:38</p> <p>6 interaction with him in the context of the 14:16:40</p> <p>7 CLASS trial. 14:16:42</p> <p>8 Q. But in another context, he 14:16:43</p> <p>9 seemed overly willing to please his 14:16:46</p> <p>10 employer? 14:16:49</p> <p>11 MR. WEISS: I object to the form 14:16:49</p> <p>12 of the question. Mischaracterizes the 14:16:50</p> <p>13 witness' testimony. 14:16:52</p> <p>14 A. Yes. 14:16:53</p> <p>15 Q. In what context was that? 14:16:53</p> <p>16 A. It was an earlier drug candidate 14:16:55</p> <p>17 exclusively at Pfizer in the mid 1990s. 14:16:58</p> <p>18 He had been on the advisory committee at 14:17:03</p> <p>19 the FDA, had a very negative review of the 14:17:08</p> <p>20 drug. We did a postmortem subsequent to 14:17:12</p> <p>21 that to figure out where to go from there, 14:17:14</p> <p>22 what was wrong, and at that point he had a 14:17:17</p> <p>23 very positive view of the drug and really 14:17:20</p> <p>24 that was not helpful for us because the 14:17:22</p> <p>25 whole point of the exercise was tell us 14:17:25</p> <p>Page 245</p> |



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| <p>1 E. Weiner<br/>2 all the bad things, we'll see what we can 14:17:28<br/>3 address and what we can't address. And 14:17:31<br/>4 the divergence of views from the same 14:17:33<br/>5 person in a relatively short period of 14:17:39<br/>6 time was extremely striking. 14:17:41<br/>7 Q. You mean he had positive views 14:17:42<br/>8 when he was being paid? 14:17:44<br/>9 MR. WEISS: I object to the form 14:17:45<br/>10 of the question. 14:17:46<br/>11 A. Well, I don't know if that was 14:17:46<br/>12 he was paid so much in that his assignment 14:17:49<br/>13 was to work with us and he wanted to make 14:17:52<br/>14 us happy. Whether that's because he's 14:17:55<br/>15 being paid or he likes to be agreeable 14:17:58<br/>16 when he's with a bunch of people, I don't 14:18:01<br/>17 know. 14:18:03<br/>18 Q. We were at a deposition with him 14:18:03<br/>19 a few days ago and he didn't seem all that 14:18:06<br/>20 agreeable. 14:18:10<br/>21 MR. SAHAM: I'll strike that. 14:18:11<br/>22 Q. Do you know that he was accused 14:18:14<br/>23 of plagiarism at some point? 14:18:15<br/>24 A. Yes. 14:18:17<br/>25 Q. And do you know that he had to 14:18:18<br/>Page 246</p> | <p>1 E. Weiner<br/>2 resign or resign from his faculty position 14:18:20<br/>3 at Harvard or not faculty position, his 14:18:24<br/>4 unpaid faculty position at Harvard Medical 14:18:26<br/>5 School as a result? 14:18:28<br/>6 A. I had heard that, yes. 14:18:30<br/>7 Q. I want to show you what I am 14:18:36<br/>8 marking as Plaintiff's Exhibit 182. 14:18:37<br/>9 Could you please take a look at 14:18:58<br/>10 Plaintiff's Exhibit 182. 14:19:00<br/>11 MR. SAHAM: And for the record, 14:19:03<br/>12 Plaintiff's 182 is a three-page e-mail 14:19:05<br/>13 chain bearing Bates numbers 14:19:09<br/>14 DEFS 00801243 through 1245. And the 14:19:15<br/>15 top e-mail is an e-mail from you to 14:19:19<br/>16 Steven W. Ryder dated September 5, 14:19:21<br/>17 2001. 14:19:25<br/>18 Q. Do you recognize this document? 14:19:28<br/>19 A. Yes. 14:19:30<br/>20 Q. And what is it? 14:19:30<br/>21 A. Well, Steven Ryder had asked me 14:19:31<br/>22 what my personal views on the assignment 14:19:33<br/>23 were. I wrote back pretty much consistent 14:19:37<br/>24 with what I've told you, although perhaps 14:19:41<br/>25 my choice of words was not as careful. 14:19:43<br/>Page 247</p> |
| <p>1 E. Weiner<br/>2 Q. And with respect to cons you 14:19:46<br/>3 write, "somewhat arrogant. A little bit 14:19:48<br/>4 of a sleaze factor. Absolutely can't be 14:19:49<br/>5 trusted;" correct? 14:19:51<br/>6 A. Yes. 14:19:52<br/>7 Q. That's what you wrote? 14:19:53<br/>8 A. Again, that was perhaps a 14:19:54<br/>9 somewhat harsh judgment but it was based 14:19:56<br/>10 on that prior experience. As I said, I 14:20:00<br/>11 had very little interaction with him on 14:20:03<br/>12 CLASS. 14:20:04<br/>13 Q. But you wrote about him on 14:20:04<br/>14 September 5, 2001 that he absolutely can't 14:20:06<br/>15 be trusted; correct? 14:20:09<br/>16 A. That's what I wrote. 14:20:10<br/>17 Q. Were you surprised when the 14:20:26<br/>18 Simon plagiarism issue subsequently arose? 14:20:29<br/>19 MR. WEISS: I object to the form 14:20:33<br/>20 of the question. 14:20:35<br/>21 A. Nothing surprises me. 14:20:35<br/>22 Q. I'm going to show you what's 14:20:55<br/>23 previously been marked Plaintiff's 14:21:05<br/>24 Exhibit 120. 14:21:05<br/>25 Do you recognize this document? 14:21:05<br/>Page 248</p>                                                                 | <p>1 E. Weiner<br/>2 In the top e-mail on the chain is an 14:21:23<br/>3 e-mail from Mona Wahba to Leland Loose and 14:21:26<br/>4 yourself and directly under that is a 14:21:27<br/>5 e-mail from Leland Loose to you and Dr. 14:21:30<br/>6 Wahba dated February 16, 2000. 14:21:34<br/>7 Do you see that? 14:21:34<br/>8 A. Yes. 14:21:36<br/>9 Q. And do you recognize that 14:21:36<br/>10 e-mail? 14:21:38<br/>11 A. Yes. 14:21:38<br/>12 Q. And what is it? 14:21:38<br/>13 A. It's just an e-mail exchange 14:21:40<br/>14 back and forth about when will we actually 14:21:42<br/>15 see what the CLASS results look like. 14:21:46<br/>16 Q. And you would have received this 14:21:47<br/>17 e-mail in the ordinary scope of your 14:21:48<br/>18 employment at Pfizer? 14:21:50<br/>19 MR. WEISS: I object to the form 14:21:51<br/>20 of the question. 14:21:52<br/>21 A. Yes. 14:21:52<br/>22 Q. And Dr. Loose wrote to you and 14:21:53<br/>23 Dr. Wahba, "believe it or not, a draft 14:21:56<br/>24 manuscript has already been written with 14:21:59<br/>25 the sort of fill in the blanks depending 14:22:02<br/>Page 249</p>                                                                        |



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|----------|--------------------------------------------|----------|----------|-------------------------------------------|----------|
| 1        | E. Weiner                                  |          | 1        | E. Weiner                                 |          |
| 2        | on what actually happens. Gutsy, Leland."  | 14:22:05 | 2        | figures you're going to want to put in.   | 14:23:00 |
| 3        | Do you think it was gutsy to               | 14:22:09 | 3        | And again, I didn't see the document so I | 14:23:02 |
| 4        | draft the CLASS manuscript prior to        | 14:22:16 | 4        | don't know which of those things they're  | 14:23:06 |
| 5        | unblinding of the data?                    | 14:22:18 | 5        | actually doing.                           | 14:23:08 |
| 6        | MR. WEISS: I object to the form            | 14:22:20 | 6        | (Whereupon, an e-mail dated               | 14:23:08 |
| 7        | of the question.                           | 14:22:21 | 7        | June 4, 2001 was marked Plaintiff's       | 14:23:08 |
| 8        | A. It depends on what they actually        | 14:22:21 | 8        | Exhibit 183 for identification.)          | 14:23:15 |
| 9        | drafted. It's standard practice in the     | 14:22:25 | 9        | Q. I want to show you what I'm            | 14:23:15 |
| 10       | industry, for instance, to have table      | 14:22:25 | 10       | marking as Plaintiff's Exhibit 183.       | 14:23:17 |
| 11       | shells for a study report before you know  | 14:22:26 | 11       | Could you please take a look at           | 14:24:12 |
| 12       | what the numbers are so you can structure  | 14:22:28 | 12       | what I've marked as Plaintiff's           | 14:24:14 |
| 13       | the tables and know what they're going to  | 14:22:32 | 13       | Exhibit 183.                              | 14:24:16 |
| 14       | look like and make sure they're consistent | 14:22:34 | 14       | MR. SAHAM: For the record --              | 14:24:16 |
| 15       | with the statistical analysis plan. If     | 14:22:37 | 15       | MR. WEISS: One hundred                    | 14:24:19 |
| 16       | they wrote conclusions, that would have    | 14:22:41 | 16       | eighty-four.                              | 14:24:21 |
| 17       | been, but I didn't see what they actually  | 14:22:43 | 17       | MR. SAHAM: Pardon?                        | 14:24:21 |
| 18       | put together so I don't know.              | 14:22:43 | 18       | MR. WEISS: One hundred                    | 14:24:21 |
| 19       | Q. Do you think it would be                | 14:22:45 | 19       | eighty-four.                              | 14:24:21 |
| 20       | inappropriate to write conclusions in a    | 14:22:47 | 20       | MR. SAHAM: One hundred                    | 14:24:26 |
| 21       | draft manuscript before the data's         | 14:22:47 | 21       | eighty-three.                             | 14:24:27 |
| 22       | unblinded?                                 | 14:22:51 | 22       | MR. WEISS: I thought the last             | 14:24:27 |
| 23       | A. I think conclusions it would be,        | 14:22:53 | 23       | one was one hundred eighty-three.         | 14:24:31 |
| 24       | certainly not to write the methodology     | 14:22:54 | 24       | MR. SAHAM: No, I thought the              | 14:24:31 |
| 25       | section and think about what tables and    | 14:22:57 | 25       | last one was one hundred eighty-two.      | 14:24:31 |
| Page 250 |                                            |          | Page 251 |                                           |          |
| 1        | E. Weiner                                  |          | 1        | E. Weiner                                 |          |
| 2        | Did we --                                  | 14:24:35 | 2        | of the question.                          | 14:25:25 |
| 3        | MR. WEISS: Oh, my bad, you're              | 14:24:35 | 3        | A. Yes.                                   | 14:25:26 |
| 4        | right.                                     | 14:24:37 | 4        | Q. And you would have sent --             | 14:25:27 |
| 5        | MR. SAHAM: So am I right, it's             | 14:24:38 | 5        | received the e-mail from Mr. Fletcher on  | 14:25:33 |
| 6        | one hundred eighty-three?                  | 14:24:39 | 6        | June 3, 2001?                             | 14:25:36 |
| 7        | MR. WEISS: You're right.                   | 14:24:41 | 7        | A. Yeah, Dr. Fletcher.                    | 14:25:37 |
| 8        | MR. SAHAM: So just for the                 | 14:24:42 | 8        | Q. And you would have responded to        | 14:25:40 |
| 9        | record, I'm showing you what's been        | 14:24:43 | 9        | Dr. Fletcher on June 4, 2001?             | 14:25:42 |
| 10       | marked as Plaintiff's Exhibit 183          | 14:24:45 | 10       | A. Yes.                                   | 14:25:45 |
| 11       | which is a two-page-Bates number -- or     | 14:24:46 | 11       | Q. And the subject of these e-mails       | 14:25:45 |
| 12       | a two-page document bearing Bates          | 14:24:50 | 12       | are draft minutes from June 1 CLASS FDA   | 14:25:48 |
| 13       | numbers DEFS 00029180 through 181.         | 14:24:53 | 13       | meeting?                                  | 14:25:51 |
| 14       | Q. And I'd ask you if you recognize        | 14:25:00 | 14       | A. Yes.                                   | 14:25:52 |
| 15       | this document.                             | 14:25:02 | 15       | Q. And what's being discussed here?       | 14:25:52 |
| 16       | A. It's an e-mail exchange between         | 14:25:02 | 16       | A. Well, it's the next round of           | 14:25:54 |
| 17       | myself and Mark Fletcher.                  | 14:25:08 | 17       | labeling negotiations.                    | 14:25:56 |
| 18       | Q. And is this an e-mail or e-mails        | 14:25:09 | 18       | Q. And was there some suggestion          | 14:25:58 |
| 19       | you would have sent and received at your   | 14:25:12 | 19       | that the sNDA be withdrawn altogether so  | 14:26:02 |
| 20       | job at Pfizer?                             | 14:25:17 | 20       | you could stick with the old warning?     | 14:26:02 |
| 21       | A. Yes.                                    | 14:25:17 | 21       | A. It looks from Mark's note as if        | 14:26:05 |
| 22       | Q. And you would have sent and             | 14:25:19 | 22       | it's something that Phil Needleman was    | 14:26:20 |
| 23       | received these e-mails in the ordinary     | 14:25:22 | 23       | thinking about.                           | 14:26:23 |
| 24       | scope of your employment there?            | 14:25:23 | 24       | Q. And who is Phil Needleman?             | 14:26:24 |
| 25       | MR. WEISS: I object to the form            | 14:25:25 | 25       | A. Phil Needleman at that time was        | 14:26:26 |
| Page 252 |                                            |          | Page 253 |                                           |          |

1 E. Weiner  
2 -- had a role in R&D at Pharmacia having 14:26:31  
3 been head of R&D at Searle. 14:26:32  
4 I don't know that other than 14:26:36  
5 that there was serious discussion about 14:26:39  
6 that. I don't recall that being the big 14:26:41  
7 theme in the label negotiations. 14:26:43  
8 Q. And did you have any other 14:26:46  
9 interactions with Dr. Needleman regarding 14:26:48  
10 CLASS? 14:26:50  
11 A. This is not even a direct 14:26:51  
12 interaction. He was at many of the 14:26:56  
13 rehearsals so he weighed in on issues. I 14:26:57  
14 don't remember what point of view 14:27:03  
15 specifically he had. 14:27:05  
16 Q. Did anyone ever express to you 14:27:06  
17 internally that it was inappropriate to 14:27:08  
18 submit the six-month data to JAMA? 14:27:11  
19 A. No. I think people were not 14:27:14  
20 happy that there was not a lot of 14:27:27  
21 opportunity to review the manuscript 14:27:30  
22 before it went out, but I don't think 14:27:33  
23 anybody complained to me that it was 14:27:36  
24 grossly inappropriate. 14:27:38  
25 Q. Did Pfizer want to do that, 14:27:41  
Page 254

1 E. Weiner  
2 Dr. Juni that you referred to earlier? 14:29:01  
3 A. I didn't recall that fact. 14:29:04  
4 Q. In looking at Exhibit 183 at the 14:29:05  
5 bottom of the first page and top of the 14:29:17  
6 second page, the e-mail you wrote to Dr. 14:29:20  
7 Fletcher on June 3, 2001 at 5:05 p.m. 14:29:24  
8 Do you see that? 14:29:29  
9 A. Yes. 14:29:30  
10 Q. And you wrote, "we are still 14:29:30  
11 back at square one." 14:29:32  
12 What did you mean by that? 14:29:33  
13 A. (Reviewing). 14:29:36  
14 I think it's just commenting on 14:30:33  
15 the lack of progress we're making in the 14:30:57  
16 negotiations because Dr. Temple said, 14:30:59  
17 well, we agree on everything except these 14:31:02  
18 three issues and those were the major 14:31:06  
19 issues that were on the table in the first 14:31:09  
20 place. 14:31:09  
21 (Whereupon, an e-mail dated 14:31:09  
22 June 12, 2001 was marked Plaintiff's 14:31:09  
23 Exhibit 184 for identification.) 14:31:13  
24 Q. I want to show you what I'm 14:31:13  
25 marking as Plaintiff's Exhibit 184. 14:31:14  
Page 256

1 E. Weiner  
2 submit the six-month data to JAMA? 14:27:43  
3 A. I don't know -- I don't recall 14:27:47  
4 any specific forum where it was actually 14:27:57  
5 actively discussed back and forth, so I 14:28:02  
6 think Pfizer accepted that that's what was 14:28:09  
7 submitted. 14:28:13  
8 Q. Do you know who made the 14:28:13  
9 ultimate decision to submit the six-month 14:28:14  
10 data? 14:28:18  
11 A. No. 14:28:18  
12 Q. Did you know Paul Dieppe, D I E 14:28:24  
13 P P E? 14:28:28  
14 A. He is a European rheumatologist. 14:28:30  
15 Q. And is he well respected? 14:28:34  
16 A. Reasonably, yes. 14:28:36  
17 Q. And do you know of his work? 14:28:37  
18 A. I'm not recalling it at this 14:28:42  
19 moment. 14:28:45  
20 Q. What do you know of Dr. Dieppe? 14:28:45  
21 A. That he's a British 14:28:48  
22 rheumatologist in academia. I don't know 14:28:56  
23 what his research interests were. 14:28:56  
24 Q. Do you know that he's coauthored 14:28:56  
25 the British Medical Journal editorial with 14:28:57  
Page 255

1 E. Weiner  
2 Could you please take a look at 14:31:43  
3 that document. 14:31:45  
4 MR. SAHAM: And for the record, 14:31:46  
5 Plaintiff's Exhibit 184 is a 14:31:47  
6 multi-page e-mail chain bearing Bates 14:31:50  
7 numbers DEFS 01903073 through 76. 14:31:52  
8 Q. I'd ask if you recognize this 14:32:00  
9 document. 14:32:02  
10 A. This is an e-mail chain between 14:32:02  
11 Mark Fletcher and a bunch of other people 14:32:18  
12 and it goes back quite a ways. 14:32:22  
13 Q. And looking at the second e-mail 14:32:24  
14 on the first page, that's an e-mail you 14:32:27  
15 were cc'd on from Mona Wahba on June 7, 14:32:30  
16 2001? 14:32:34  
17 A. Right. 14:32:34  
18 Q. And you would have received that 14:32:36  
19 in the course of your job at Pfizer? 14:32:38  
20 A. Yes. 14:32:40  
21 Q. And she writes, "I learned today 14:32:40  
22 from my market colleagues at the 14:32:47  
23 cross-functional team meeting that it will 14:32:50  
24 be even more damaging to have the CLASS 14:32:53  
25 results where the primary endpoint in the 14:32:55  
Page 257

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 E. Weiner<br/>2 GI warning section." 14:32:58<br/>3 What does that mean? 14:33:00<br/>4 A. I'm not sure exactly what she 14:33:01<br/>5 means here. 14:33:03<br/>6 Q. Does it mean that the marketing 14:33:04<br/>7 people think the warning that announces 14:33:05<br/>8 that you missed the primary endpoint in 14:33:08<br/>9 CLASS will make it more difficult to sell 14:33:11<br/>10 Celebrex than it had previously been? 14:33:13<br/>11 A. The FDA wouldn't put that type 14:33:15<br/>12 of thing in a warning anyway. Study 14:33:18<br/>13 results don't go into warnings, so I'm 14:33:21<br/>14 really not sure what she's talking about 14:33:24<br/>15 there. 14:33:26<br/>16 Q. Didn't some of the CLASS trial 14:33:26<br/>17 results make its way into the warning 14:33:30<br/>18 modification or the safety label 14:33:32<br/>19 modification? 14:33:33<br/>20 A. The label modification, yes. 14:33:34<br/>21 But there's a section for clinical trial 14:33:36<br/>22 results and the warnings don't have 14:33:38<br/>23 clinical trial results in them. I mean, 14:33:41<br/>24 she's talking here about CLASS results in 14:33:44<br/>25 the GI warning section and that just -- 14:33:46<br/>Page 258</p> | <p>1 E. Weiner<br/>2 labels are not structured that way so I'm 14:33:50<br/>3 not sure what she means. 14:33:53<br/>4 Q. So she may have been referring 14:33:54<br/>5 to a different portion of the label? 14:33:55<br/>6 A. Maybe. I don't know. 14:33:58<br/>7 Q. And who is Mitchell Gandelman? 14:33:59<br/>8 A. Mitchell worked for Liz Kitsis. 14:34:08<br/>9 He's one of the medical marketing people. 14:34:12<br/>10 Q. And what was Kitsis' job? 14:34:14<br/>11 A. She was the lead medical 14:34:18<br/>12 marketing person for Celebrex and Bextra. 14:34:19<br/>13 Q. Turning to the second page, the 14:34:26<br/>14 bottom of the first page and top of the 14:34:29<br/>15 second page, that's an e-mail from Mark 14:34:32<br/>16 Fletcher to yourself, Peter Corr, and 14:34:36<br/>17 Steven W. Ryder; is that correct? 14:34:40<br/>18 A. (Reviewing). 14:34:42<br/>19 MR. SAHAM: Can you read back the 14:35:50<br/>20 question, please. 14:35:51<br/>21 (Whereupon the requested portion 14:35:52<br/>22 was read back by the reporter) 14:36:07<br/>23 A. Yes. 14:36:07<br/>24 Q. And this is an e-mail you would 14:36:07<br/>25 have received on or about June 6, 2001? 14:36:10<br/>Page 259</p> |
| <p>1 E. Weiner<br/>2 A. Yes. 14:36:13<br/>3 Q. And you would have received it 14:36:14<br/>4 as part of your job functions at Pfizer? 14:36:15<br/>5 A. Yes. 14:36:17<br/>6 Q. And on the second page, page two 14:36:18<br/>7 of Exhibit 184, Dr. Fletcher writes to 14:36:23<br/>8 yourself, Dr. Corr, and Dr. Ryder, "the 14:36:28<br/>9 numbers by themselves would be misleading 14:36:33<br/>10 and potentially very damaging." 14:36:35<br/>11 Do you know what he's referring 14:36:37<br/>12 to there? 14:36:39<br/>13 A. Well, he's quoting Eric Sirota, 14:36:40<br/>14 so that's Eric's opinion, not necessarily 14:36:44<br/>15 Mark's. 14:36:46<br/>16 Q. Who is Eric Sirota? 14:36:47<br/>17 A. He was one of the commercial 14:36:50<br/>18 people. 14:36:52<br/>19 Q. And what was his opinion being 14:36:52<br/>20 expressed? 14:36:54<br/>21 A. I guess apparently he felt that 14:36:54<br/>22 having just the -- and I'm not sure what 14:36:57<br/>23 numbers they're talking about, is that 14:37:01<br/>24 CSUGIEs, is that CSUGIEs plus symptomatic 14:37:04<br/>25 ulcers, but basically he wants the P 14:37:11<br/>Page 260</p>                                                                                 | <p>1 E. Weiner<br/>2 values with the combined endpoint rather 14:37:14<br/>3 than just I guess no P values there. 14:37:17<br/>4 Q. And then if you skip down a 14:37:20<br/>5 little bit it says, "we should remove any 14:37:22<br/>6 information about CLASS." 14:37:25<br/>7 Do you know what's being 14:37:26<br/>8 referred to there? 14:37:28<br/>9 A. Not exactly. That's not 14:37:29<br/>10 feasible anyway. 14:37:33<br/>11 (Whereupon, an e-mail dated 14:37:41<br/>12 July 2, 2001 was marked Plaintiff's 14:37:41<br/>13 Exhibit 185 for identification.) 14:37:42<br/>14 Q. I want to show you what I'm 14:37:42<br/>15 marking as Plaintiff's Exhibit 185. 14:37:43<br/>16 Could you please take a look at 14:38:12<br/>17 that document. 14:38:15<br/>18 MR. SAHAM: And for the record, 14:38:15<br/>19 Exhibit 185 is a two-page e-mail chain 14:38:16<br/>20 bearing Bates numbers DEFS 03824859 14:38:20<br/>21 through 60. 14:38:25<br/>22 Q. I'll ask you if you recognize 14:38:30<br/>23 this e-mail chain. 14:38:31<br/>24 A. Yes. 14:38:34<br/>25 Q. And what is it? 14:38:34<br/>Page 261</p>                                                                                                     |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 E. Weiner<br/>2 A. It's an exchange between me and 14:38:41<br/>3 Mark Fletcher. 14:38:41<br/>4 Q. And this exchange occurred on or 14:38:41<br/>5 about July 2, 2001? 14:38:41<br/>6 A. Yes. 14:38:43<br/>7 Q. And you would have sent and 14:38:44<br/>8 received these e-mails in the ordinary 14:38:48<br/>9 scope of your employment at Pfizer? 14:38:50<br/>10 MR. WEISS: I object to the form 14:38:52<br/>11 of the question. 14:38:53<br/>12 A. Yes. 14:38:53<br/>13 Q. And what are you discussing in 14:38:54<br/>14 this e-mail? The top e-mail I'm referring 14:38:59<br/>15 to, the one you wrote. 14:39:05<br/>16 A. Well, it's about the CLASS 14:39:06<br/>17 label, latest versions at that time. 14:39:09<br/>18 Q. And towards the bottom of your 14:39:11<br/>19 e-mail you write, "the numbers currently 14:39:13<br/>20 quoted look horrible, much worse than the 14:39:15<br/>21 standard labeling for NSAID because 14:39:18<br/>22 they're looking at symptomatic plus 14:39:21<br/>23 complicated ulcers from CLASS whereas they 14:39:24<br/>24 should only be looking at the complicated 14:39:27<br/>25 ulcer rate." 14:39:29</p> <p style="text-align: right;">Page 262</p> | <p>1 E. Weiner<br/>2 What did you mean by that? 14:39:30<br/>3 A. Well, the prior label focused on 14:39:33<br/>4 -- which is based on the NDA database, the 14:40:13<br/>5 warning section -- remember I told you 14:40:16<br/>6 there was a number quoted and that was the 14:40:18<br/>7 complicated ulcers, the rate of 14:40:20<br/>8 complicated ulcers that was in the NDA 14:40:23<br/>9 database. This iteration of the label, 14:40:25<br/>10 which I don't think is what ended up being 14:40:27<br/>11 the final one, had -- was quoting the 14:40:29<br/>12 number of complicated plus symptomatic 14:40:33<br/>13 ulcers which is of course a much bigger 14:40:38<br/>14 number in the warning section as derived 14:40:42<br/>15 from the CLASS trial. So this is a larger 14:40:46<br/>16 number than certainly the previous number 14:40:51<br/>17 which was complicated ulcers from the NDA 14:40:54<br/>18 database and also, as I said earlier, a 14:40:58<br/>19 larger number than the standard NSAID 14:41:02<br/>20 warning that predates CLASS or celecoxib 14:41:04<br/>21 or any of these things. 14:41:07<br/>22 Q. And in order to get that out of 14:41:08<br/>23 the label, did you point out to the FDA 14:41:11<br/>24 that that was not even the primary 14:41:13<br/>25 endpoint of CLASS? 14:41:16</p> <p style="text-align: right;">Page 263</p> |
| <p>1 E. Weiner<br/>2 A. I don't recall -- again, I was 14:41:17<br/>3 not at the negotiations so I don't recall 14:41:19<br/>4 what argument they used. 14:41:21<br/>5 Q. Would that be an argument that 14:41:22<br/>6 would come to mind? 14:41:24<br/>7 MR. WEISS: I object to the form 14:41:27<br/>8 of the question. 14:41:28<br/>9 A. Well, yeah, it would be a 14:41:28<br/>10 reasonable argument. 14:41:30<br/>11 (Whereupon, an e-mail dated 14:41:33<br/>12 December 31, 2002 was marked 14:41:33<br/>13 Plaintiff's Exhibit 186 14:41:33<br/>14 for identification.) 14:41:34<br/>15 Q. I want to show you what I'm 14:41:34<br/>16 marking as Plaintiff's Exhibit 186. 14:41:35<br/>17 Could you please take a look at 14:42:04<br/>18 Plaintiff's Exhibit 186, which is a 14:42:06<br/>19 three-page e-mail chain bearing Bates 14:42:12<br/>20 numbers DEFS 00029482 through 484. 14:42:15<br/>21 A. (Reviewing). 14:42:30<br/>22 Q. Do you recognize this document? 14:42:35<br/>23 A. Yes. 14:42:37<br/>24 Q. And what is it? 14:42:37<br/>25 A. Let me read it first. 14:42:38</p> <p style="text-align: right;">Page 264</p>                                                                | <p>1 E. Weiner<br/>2 (Reviewing). 14:42:40<br/>3 Well, presumably it's commentary 14:43:22<br/>4 on a study that was done that found that 14:43:26<br/>5 diclofenac plus omeprazole -- omeprazole 14:43:30<br/>6 is a proton pump inhibitor, it's used to 14:43:37<br/>7 prevent or treat ulcers -- that the GI 14:43:39<br/>8 safety of celecoxib alone was roughly 14:43:43<br/>9 comparable to diclofenac plus omeprazole. 14:43:46<br/>10 Q. And is this part of CONDOR or 14:43:49<br/>11 something that was explored in CONDOR? 14:43:52<br/>12 A. This is sort of pre-CONDOR, I 14:43:54<br/>13 think. That's I think some of the 14:43:57<br/>14 thinking that led them to design that 14:44:00<br/>15 study. 14:44:01<br/>16 Q. And this e-mail, at least the 14:44:02<br/>17 top e-mail, you sent to Dr. Fletcher, 14:44:05<br/>18 Sirota, and Mr. Gandelman on or about 14:44:10<br/>19 December 31, 2002? 14:44:12<br/>20 A. Yes. 14:44:13<br/>21 Q. And you did so as part of your 14:44:14<br/>22 job at Pfizer? 14:44:17<br/>23 A. Yes. 14:44:17<br/>24 Q. Down at the bottom of this 14:44:19<br/>25 e-mail you write, "the editors of NEJM 14:44:20</p> <p style="text-align: right;">Page 265</p>                                                                                                                                                                    |



|          |                                            |          |          |                                            |          |
|----------|--------------------------------------------|----------|----------|--------------------------------------------|----------|
| 1        | E. Weiner                                  |          | 1        | E. Weiner                                  |          |
| 2        | didn't think it was flawed since they      | 14:44:22 | 2        | are also instances of journals I think     | 14:45:28 |
| 3        | published it and they have much better     | 14:44:24 | 3        | having an axe to grind. So I don't         | 14:45:31 |
| 4        | credibility than anybody from industry."   | 14:44:27 | 4        | necessarily believe that industry is       | 14:45:34 |
| 5        | What does that mean?                       | 14:44:31 | 5        | inherently -- inherently has less          | 14:45:39 |
| 6        | A. Well, generally editors of              | 14:44:32 | 6        | credibility than anyone else, but I don't  | 14:45:42 |
| 7        | medical journals have a high degree of     | 14:44:38 | 7        | dispute that that's the public perception. | 14:45:45 |
| 8        | credibility in the medical community,      | 14:44:41 | 8        | Q. But there is certainly a                | 14:45:46 |
| 9        | sometimes that's deserved, sometimes not,  | 14:44:43 | 9        | potential issue of bias. I'm not saying    | 14:45:48 |
| 10       | but the fact is that they certainly have   | 14:44:43 | 10       | that the bias actually corrupts anybody in | 14:45:48 |
| 11       | more credibility than industry does.       | 14:44:47 | 11       | any particular case.                       | 14:45:50 |
| 12       | Q. And does the industry have less         | 14:44:49 | 12       | A. There's always a potential issue        | 14:45:50 |
| 13       | credibility because generally there's some | 14:44:52 | 13       | of bias. All I'm saying is that it's not   | 14:45:53 |
| 14       | bias because, if a drug performs well, the | 14:44:54 | 14       | unique to industry. Everybody wrestles     | 14:45:56 |
| 15       | industry has a -- or a company may have a  | 14:44:57 | 15       | with that.                                 | 14:45:59 |
| 16       | financial gain as a result?                | 14:45:00 | 16       | Q. But one at least issue of bias          | 14:45:59 |
| 17       | MR. WEISS: I object to the form            | 14:45:01 | 17       | or --                                      | 14:46:02 |
| 18       | of the question.                           | 14:45:02 | 18       | MR. SAHAM: Strike that.                    | 14:46:04 |
| 19       | A. That's a perception. I mean,            | 14:45:03 | 19       | Q. One potential bias of a sponsor         | 14:46:04 |
| 20       | one has to balance that with the fact that | 14:45:05 | 20       | of a drug, an industry sponsor of a drug   | 14:46:08 |
| 21       | academia people's careers depend on        | 14:45:10 | 21       | in putting forward research is the fact    | 14:46:13 |
| 22       | publishing whereas in industry they don't  | 14:45:13 | 22       | that if it's more positive, the company    | 14:46:16 |
| 23       | and that industry studies are audited and  | 14:45:15 | 23       | would make or could make more money; is    | 14:46:23 |
| 24       | so there can't be any fraud with the data  | 14:45:19 | 24       | that correct?                              | 14:46:23 |
| 25       | whereas studies in academia aren't. There  | 14:45:24 | 25       | A. That's a potential source of            | 14:46:23 |
| Page 266 |                                            |          | Page 267 |                                            |          |
| 1        | E. Weiner                                  |          | 1        | E. Weiner                                  |          |
| 2        | bias.                                      | 14:46:24 | 2        | Q. And it was sent -- this e-mail          | 14:47:58 |
| 3        | (Whereupon, an e-mail dated                | 14:46:24 | 3        | was sent to you and to Steven Ryder and to | 14:48:00 |
| 4        | July 27, 2001 was marked Plaintiff's       | 14:46:24 | 4        | Peter Corr?                                | 14:48:03 |
| 5        | Exhibit 187 for identification.)           | 14:46:37 | 5        | A. Yes.                                    | 14:48:04 |
| 6        | Q. I want to show you what I'm             | 14:46:37 | 6        | Q. On or about July 27, 2001?              | 14:48:04 |
| 7        | marking as Plaintiff's Exhibit 187.        | 14:46:39 | 7        | A. Yeah. It was actually sent to           | 14:48:06 |
| 8        | Could you please take a look at            | 14:47:04 | 8        | Ryder and Corr with me copied in.          | 14:48:09 |
| 9        | that document.                             | 14:47:06 | 9        | Q. And then you responded to this          | 14:48:15 |
| 10       | MR. SAHAM: And for the record,             | 14:47:09 | 10       | e-mail on July 27, 2001?                   | 14:48:18 |
| 11       | one hundred eighty-seven bears Bates       | 14:47:09 | 11       | A. Yes.                                    | 14:48:19 |
| 12       | numbers DEFS 01723273 through 274.         | 14:47:12 | 12       | Q. And you wrote, "I think CLASS II        | 14:48:20 |
| 13       | Q. And I'd ask you if you recognize        | 14:47:18 | 13       | is a bad idea?"                            | 14:48:22 |
| 14       | this document.                             | 14:47:19 | 14       | A. Yes.                                    | 14:48:24 |
| 15       | A. (Reviewing).                            | 14:47:20 | 15       | Q. And why did you write that?             | 14:48:24 |
| 16       | Yes.                                       | 14:47:23 | 16       | A. Well, because if we -- and you          | 14:48:27 |
| 17       | Q. And what is it?                         | 14:47:36 | 17       | know, again, with any clinical trial, you  | 14:48:32 |
| 18       | A. Just Mark updating us on a              | 14:47:37 | 18       | can make your endpoint or not. And of      | 14:48:35 |
| 19       | couple of issues with the COX-2 program    | 14:47:43 | 19       | course they're much more complex than just | 14:48:41 |
| 20       | including a second events trial, CLASS II, | 14:47:46 | 20       | binary, but consider the possibilities.    | 14:48:43 |
| 21       | if you will.                               | 14:47:50 | 21       | If you come out looking the way you want   | 14:48:45 |
| 22       | Q. And ultimately the CLASS II             | 14:47:51 | 22       | to look and you've used naproxen, I don't  | 14:48:48 |
| 23       | trial was not conducted?                   | 14:47:53 | 23       | think anybody would be very impressed with | 14:48:52 |
| 24       | A. Not in the form that they were          | 14:47:54 | 24       | that. Because it's well acknowledged       | 14:48:55 |
| 25       | talking about here.                        | 14:47:56 | 25       | there's a spectrum of GI toxicity for the  | 14:48:56 |
| Page 268 |                                            |          | Page 269 |                                            |          |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 E. Weiner<br/>2 various NSAIDs out there and, you know, a 14:48:57<br/>3 particularly bad actor, for instance, is 14:48:59<br/>4 indomethacin. Naproxen is probably in 14:49:03<br/>5 sort of middle to bad end of the spectrum. 14:49:10<br/>6 Ibuprofen and diclofenac are sort of on 14:49:14<br/>7 the benign end of the spectrum. And all 14:49:18<br/>8 that was known long before any COX-2 14:49:20<br/>9 agents came out. 14:49:22<br/>10 So if you pick naproxen, what 14:49:24<br/>11 are you getting if you're better than 14:49:26<br/>12 naproxen? I think everybody at that point 14:49:28<br/>13 believed that we were better than 14:49:33<br/>14 naproxen. And if you look at the 14:49:35<br/>15 epidemiology data and other things where 14:49:36<br/>16 there was some comparisons, they would 14:49:40<br/>17 certainly support that. So if we win, it 14:49:43<br/>18 doesn't tell anybody anything they didn't 14:49:46<br/>19 already pretty much know to be the case. 14:49:49<br/>20 And if things get screwed up in clinical 14:49:52<br/>21 trials, as they always have a possibility 14:49:54<br/>22 of doing, then you really lose. So how 14:49:56<br/>23 can this possibly be a benefit. 14:50:03<br/>24 Q. Is it accurate that the VIGOR 14:50:05<br/>25 hurdle for Merck and Vioxx was a lot lower 14:50:09</p> <p style="text-align: right;">Page 270</p> | <p>1 E. Weiner<br/>2 because they used naproxen and then they 14:50:13<br/>3 used the combined endpoint of complicated 14:50:16<br/>4 and symptomatic ulcers? 14:50:17<br/>5 A. I don't know if it's accurate or 14:50:17<br/>6 not but I certainly agree with that 14:50:18<br/>7 proposition. 14:50:21<br/>8 Q. So you guys sort of swung for 14:50:23<br/>9 the fences with a tougher endpoint as 14:50:27<br/>10 compared to Merck that played it safe with 14:50:29<br/>11 VIGOR using a more easily achieved 14:50:32<br/>12 endpoint? 14:50:36<br/>13 A. Well, I think it's fair to say 14:50:36<br/>14 that CLASS was a more ambitious trial. 14:50:38<br/>15 Q. And then at the end you write, 14:50:46<br/>16 "why should we spend lots of money only to 14:50:48<br/>17 at best end up where we started." 14:50:52<br/>18 What did you mean there? 14:50:52<br/>19 A. Well, again, if you win, it's 14:50:53<br/>20 sort of so what. 14:50:56<br/>21 (Whereupon, an e-mail dated 14:50:56<br/>22 August 27, 2003 was marked Plaintiff's 14:50:56<br/>23 Exhibit 188 for identification.) 14:51:08<br/>24 Q. I want to show you what I'm 14:51:08<br/>25 marking as Plaintiff's Exhibit 188. 14:51:09</p> <p style="text-align: right;">Page 271</p> |
| <p>1 E. Weiner<br/>2 Could you please take a look at 14:51:36<br/>3 Plaintiff's Exhibit 188. 14:51:38<br/>4 MR. SAHAM: And for the record, 14:51:40<br/>5 Plaintiff's Exhibit 188 is a 14:51:42<br/>6 three-page e-mail chain bearing Bates 14:51:44<br/>7 numbers DEFS 02953679 through 681. 14:51:48<br/>8 Q. And I'd ask you if you recognize 14:51:58<br/>9 this document. 14:52:00<br/>10 A. Yes. 14:52:01<br/>11 Q. And what is it? 14:52:01<br/>12 A. Just an e-mail correspondence 14:52:02<br/>13 about some research that was done showing 14:52:05<br/>14 that some of the drugs, particularly 14:52:07<br/>15 ibuprofen, can interfere with the 14:52:11<br/>16 cardioprotective activities of aspirin. 14:52:16<br/>17 Q. And the top e-mail is from Dr. 14:52:19<br/>18 Wahba to Mitch Gandelman and yourself? 14:52:23<br/>19 A. Yes. 14:52:25<br/>20 Q. And Dr. Wahba writes, "the story 14:52:26<br/>21 with ASA and COX-2 is very complicated. 14:52:30<br/>22 With the fourfold increase in ulcer 14:52:34<br/>23 complications in CLASS and the new Vioxx 14:52:37<br/>24 label change, we are facing a lot of 14:52:40<br/>25 challenges re the risk/benefits." 14:52:43</p> <p style="text-align: right;">Page 272</p>                                                                                                                                                       | <p>1 E. Weiner<br/>2 Do you know what she's referring 14:52:45<br/>3 to there? 14:52:47<br/>4 A. I don't know what the fourfold 14:52:47<br/>5 refers to. 14:52:49<br/>6 Q. Well, was there an increase in 14:52:54<br/>7 ulcer complication rates in CLASS as 14:52:57<br/>8 compared to earlier studies with respect 14:52:59<br/>9 to Celebrex? 14:53:01<br/>10 A. Yes, but I don't know whether 14:53:02<br/>11 she's referring to there or whether she 14:53:04<br/>12 was referring to the complications on 14:53:07<br/>13 CLASS plus aspirin versus no aspirin and 14:53:12<br/>14 it's not really clear from this e-mail. 14:53:15<br/>15 It might have been at the time but I'm not 14:53:17<br/>16 sure what she's talking about. 14:53:20<br/>17 Q. But there was definitely an 14:53:21<br/>18 increase in the ulcer complication rate in 14:53:23<br/>19 CLASS as compared to prior study? 14:53:26<br/>20 MR. WEISS: I object to the form 14:53:28<br/>21 of the question. 14:53:30<br/>22 A. That's a totally different 14:53:30<br/>23 question. I don't know if that's what she 14:53:40<br/>24 means. 14:53:40<br/>25 Q. Well, I'm just asking if that's 14:53:40</p> <p style="text-align: right;">Page 273</p>                            |

|                                                       |                                                       |
|-------------------------------------------------------|-------------------------------------------------------|
| 1 E. Weiner                                           | 1 E. Weiner                                           |
| 2 true or not. 14:53:40                               | 2 of the question. 14:54:30                           |
| 3 A. It's true if you compare the 14:53:40            | 3 MR. SAHAM: Let's take a short 14:54:31              |
| 4 rate of complicated ulcers in CLASS with 14:53:40   | 4 break because I think we're getting 14:54:32        |
| 5 the rate of complicated ulcers in the 14:53:43      | 5 pretty close to the end and we just 14:54:35        |
| 6 database, in the NDA database that 14:53:46         | 6 want to sort through the last few 14:54:35          |
| 7 preceded it, but again that database 14:53:50       | 7 documents and see where we are. 14:54:36            |
| 8 wasn't designed as an outcomes trial so 14:53:52    | 8 THE VIDEOGRAPHER: Stand by. 14:54:36                |
| 9 I'm not sure it's a totally valid 14:53:52          | 9 We are going off the record. 14:54:37               |
| 10 comparison. 14:53:56                               | 10 The time is 2:52 p.m. 14:54:39                     |
| 11 Q. What is the NDA database that 14:53:56          | 11 This is the end of tape number 14:54:41            |
| 12 you're referring to? 14:53:58                      | 12 four. 14:54:43                                     |
| 13 A. Well, that's where the original 14:53:59        | 13 (Whereupon a break was taken) 14:54:44             |
| 14 label came from. What was done in the NDA 14:54:01 | 14 (Whereupon, an e-mail dated 15:04:35               |
| 15 database is that all GI events were 14:54:04       | 15 February 16, 2000 was marked 15:04:35              |
| 16 adjudicated by a committee, but it was 14:54:09    | 16 Plaintiff's Exhibit 189 15:04:35                   |
| 17 just pooling all the studies that were 14:54:10    | 17 for identification.) 15:04:37                      |
| 18 done for various reasons, mostly for 14:54:13      | 18 (Whereupon, an e-mail dated 15:04:37               |
| 19 arthritis, and it was not specifically 14:54:18    | 19 August 20, 2001 was marked 15:04:37                |
| 20 designed or powered as any kind of GI 14:54:20     | 20 Plaintiff's Exhibit 190 15:04:37                   |
| 21 outcomes trial. 14:54:23                           | 21 for identification.) 15:04:37                      |
| 22 Q. And you would have received this 14:54:24       | 22 THE VIDEOGRAPHER: We are back on 15:04:37          |
| 23 e-mail in the ordinary scope of your 14:54:27      | 23 the record. The time is 3:02 p.m. 15:04:38         |
| 24 employment at Pfizer? 14:54:28                     | 24 This is the beginning of tape 15:04:40             |
| 25 MR. WEISS: I object to the form 14:54:29           | 25 number five. 15:04:44                              |
| Page 274                                              | Page 275                                              |
| 1 E. Weiner                                           | 1 E. Weiner                                           |
| 2 Q. Dr. Weiner, I'm showing you what 15:04:44        | 2 Exhibit 115 where you weren't sure whether 15:05:33 |
| 3 I've marked as Plaintiff's Exhibit 189. 15:04:49    | 3 that March 17 date was when it was 15:05:38         |
| 4 Could you please take a look at 15:04:52            | 4 unlocked -- I'm sorry, when the database 15:05:42   |
| 5 that document. 15:04:54                             | 5 was locked or when the last patient was 15:05:44    |
| 6 MR. SAHAM: For the record, it 15:04:55              | 6 treated? 15:05:46                                   |
| 7 bears Bates numbers DEFS 00081653 15:04:56          | 7 And would it be accurate to say 15:05:47            |
| 8 through 654. 15:05:00                               | 8 that the database, as you just testified, 15:05:49  |
| 9 Q. And I'd ask you if you recognize 15:05:03        | 9 was locked on March 17? 15:05:51                    |
| 10 that. 15:05:05                                     | 10 A. Yes. Yes, it was. 15:05:52                      |
| 11 A. Yes. 15:05:06                                   | 11 Q. And then the data was unblinded 15:05:54        |
| 12 Q. And what is it? 15:05:06                        | 12 at that point? 15:05:57                            |
| 13 A. It's an e-mail exchange between 15:05:07        | 13 A. Yes. 15:05:57                                   |
| 14 myself and Mona Wahba. 15:05:10                    | 14 Q. And this document you received 15:06:03         |
| 15 Q. And Dr. Wahba writes at the top, 15:05:11       | 15 in the ordinary scope of your employment 15:06:05  |
| 16 "the database will be locked at 3/17. We 15:05:13  | 16 at Pfizer? 15:06:07                                |
| 17 will see then." 15:05:17                           | 17 A. Yes. 15:06:07                                   |
| 18 Do you see that? 15:05:17                          | 18 MR. WEISS: I object to the form 15:06:08           |
| 19 A. Yes. 15:05:21                                   | 19 of the question. 15:06:09                          |
| 20 Q. And does that refresh your 15:05:21             | 20 Q. I want to show you what I've 15:06:20           |
| 21 recollection that the database was locked 15:05:23 | 21 marked as Plaintiff's Exhibit 190. 15:06:22        |
| 22 on March 17, 2000? 15:05:25                        | 22 Could you take a look at that 15:06:24             |
| 23 A. Yes. 15:05:26                                   | 23 document. 15:06:26                                 |
| 24 Q. And when we looked at the final 15:05:27        | 24 MR. SAHAM: And for the record, 15:06:30            |
| 25 report, the second page of I believe it's 15:05:29 | 25 Plaintiff's Exhibit 190 bears Bates 15:06:30       |
| Page 276                                              | Page 277                                              |

1 E. Weiner  
2 numbers DEFS 03752026 through 28. And 15:06:32  
3 it's an e-mail chain. 15:06:41  
4 Q. And I ask you if you recognize 15:06:43  
5 it. 15:06:45  
6 A. Yes. 15:06:45  
7 Q. And what is it? 15:06:46  
8 A. It's an e-mail exchange about 15:06:47  
9 letters to the editor of JAMA. 15:06:52  
10 Q. And in what context were these 15:06:56  
11 letters generated? 15:06:59  
12 A. Let me just read through this a 15:06:59  
13 minute. 15:07:05  
14 (Reviewing). 15:07:05  
15 Oh, it was about two editorials 15:07:08  
16 that I think were critical of the use of 15:07:41  
17 the six-month data in the JAMA -- original 15:07:44  
18 JAMA article. 15:07:51  
19 Q. And in your August 20, 2001 15:07:52  
20 e-mail you write at the bottom, "JAMA 15:07:53  
21 stuck with the six-month analysis." 15:07:57  
22 Do you see that? 15:08:00  
23 A. Yes. 15:08:02  
24 Q. Well, JAMA was only given the 15:08:02  
25 six-month analysis, they weren't given the 15:08:05  
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1 E. Weiner  
2 data to JAMA; isn't that correct? 15:09:02  
3 MR. WEISS: I object to the form 15:09:04  
4 the question. 15:09:05  
5 A. Well, I assume that they would 15:09:07  
6 have made it available had JAMA requested 15:09:08  
7 it. 15:09:09  
8 Q. And you assume they made it 15:09:10  
9 available because it was improper not to; 15:09:11  
10 correct? 15:09:13  
11 MR. WEISS: I object to the form 15:09:13  
12 of the question. 15:09:14  
13 A. Well, I would assume that 15:09:16  
14 because I would have thought during the 15:09:18  
15 peer review process, if nothing else, 15:09:18  
16 somebody would have said, well, the study 15:09:21  
17 goes on more than six months, you say 15:09:22  
18 right in your methods section, so what 15:09:23  
19 happened. 15:09:28  
20 Q. And have you ever been involved 15:09:28  
21 in a situation with a medical journal 15:09:30  
22 where only part of the data was provided 15:09:32  
23 without an explanation as to why? 15:09:35  
24 MR. WEISS: I object to the form 15:09:37  
25 of the question. 15:09:38  
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1 E. Weiner  
2 full data; correct? 15:08:08  
3 A. Yes. 15:08:09  
4 Q. And then you write, "without 15:08:10  
5 step two, the reader will still assume 15:08:11  
6 that somehow we selectively sent one 15:08:14  
7 analysis to JAMA and another to FDA and 15:08:14  
8 this is not the case." 15:08:18  
9 That was the case though; 15:08:19  
10 correct? 15:08:21  
11 MR. WEISS: I object to the form 15:08:21  
12 of the question. 15:08:22  
13 A. Well, to be fair, a couple of 15:08:23  
14 things. 15:08:26  
15 I was never exactly privy to 15:08:26  
16 what was sent to JAMA and what wasn't. I 15:08:29  
17 think at the time I wrote this letter I 15:08:32  
18 assumed that they at least having read the 15:08:35  
19 methods section were aware of the one-year 15:08:40  
20 data. And we clearly sent both to FDA. 15:08:44  
21 We certainly didn't just send the 15:08:49  
22 twelve-month data to FDA. 15:08:53  
23 Q. You assumed that your colleagues 15:08:55  
24 at Pharmacia and the individual authors on 15:08:57  
25 Wolf Exhibit 3 had submitted the entire 15:08:59  
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1 E. Weiner  
2 A. No. But as I said, my 15:09:40  
3 involvement in submitting clinical data is 15:09:51  
4 fairly limited. 15:09:51  
5 MR. SAHAM: I don't have any 15:09:51  
6 additional questions. 15:09:51  
7 MR. WEISS: I just have one or 15:09:51  
8 two questions. 15:09:53  
9 MR. SAHAM: Subject to I may have 15:10:02  
10 some questions after him. 15:10:04  
11 EXAMINATION BY 15:10:06  
12 MR. WEISS: 15:10:07  
13 Q. Dr. Weiner, I ask you to pull 15:10:07  
14 out from your pile of exhibits Exhibit 15:10:13  
15 Number 173. Let me know when you've 15:10:21  
16 located it. 15:10:59  
17 A. I'm getting close. Okay, I got 15:11:00  
18 it. 15:11:10  
19 Q. Could you take a look at the 15:11:10  
20 second e-mail in the chain which is -- I'm 15:11:13  
21 sorry, could you take a look at the second 15:11:16  
22 page of the document which is -- which 15:11:19  
23 bears Bates number 00291346 and the e-mail 15:11:23  
24 at the top is from Mona Wahba to Leland 15:11:29  
25 Loose and yourself dated January 22, 2001. 15:11:32  
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1 E. Weiner  
2 And I'd ask you to take a look at the 15:11:36  
3 subject line of the e-mail. 15:11:39  
4 Do you see what that says? 15:11:40  
5 A. Meeting FDA tomorrow regarding 15:11:42  
6 CLASS advisory committee. 15:11:47  
7 Q. I'm sorry, let me ask you again 15:11:50  
8 to turn to the second page of the 15:11:52  
9 document. 15:11:54  
10 A. Oh, okay. The top of the second 15:11:54  
11 page. 15:11:58  
12 Q. Right, and that's the e-mail -- 15:11:58  
13 A. Comments on FDA CLASS advisory 15:11:59  
14 committee briefing document. 15:12:02  
15 Q. And do you recall you had some 15:12:03  
16 discussion with Mr. Saham about the 15:12:04  
17 content of this e-mail? 15:12:07  
18 A. Yes. 15:12:08  
19 Q. And reviewing this e-mail, do 15:12:08  
20 you have any view as to whether the 15:12:12  
21 information being expressed in this e-mail 15:12:16  
22 represents Mona Wahba's opinions? 15:12:20  
23 MR. SAHAM: Objection to form. 15:12:24  
24 MR. WEISS: Strike that. Let me 15:12:28  
25 ask it this way. 15:12:29

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1 E. Weiner  
2 rather than through what Mona's saying 15:13:40  
3 herself. 15:13:48  
4 Q. You were asked some questions 15:13:50  
5 about Mr. Saham about some comments you 15:13:52  
6 made in an e-mail to Steven Ryder about 15:13:56  
7 Lee Simon. 15:14:00  
8 Do you remember that? 15:14:01  
9 A. Yes. 15:14:01  
10 Q. And in that e-mail, I believe 15:14:02  
11 you said that Dr. Simon absolutely could 15:14:04  
12 not be trusted. 15:14:08  
13 Do you recall that? 15:14:09  
14 A. Yes. 15:14:10  
15 Q. And I'm referring now to what's 15:14:10  
16 been marked as Exhibit 182. 15:14:13  
17 And I would just ask you, is it 15:14:17  
18 your opinion that Dr. Simon's clinical 15:14:19  
19 judgments absolutely can't be trusted? 15:14:24  
20 A. No, no, his clinical judgments 15:14:29  
21 were very sharp and, as I said in that 15:14:31  
22 e-mail, he had a lively intellect. 15:14:34  
23 MR. WEISS: I have no further 15:14:49  
24 questions. 15:14:50  
25 MR. SAHAM: I don't have anything 15:14:50

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1 E. Weiner  
2 Q. Looking at this e-mail, what is 15:12:30  
3 your view as to what Mona Wahba is 15:12:35  
4 conveying to you? 15:12:39  
5 A. Well, she's conveying a summary 15:12:40  
6 of the briefing book written by FDA. 15:12:43  
7 Q. Do you have an understanding as 15:12:46  
8 to whether or not what is reflected in 15:12:47  
9 this e-mail reflects Mona Wahba's 15:12:50  
10 opinions? 15:12:53  
11 A. I think the only place her 15:12:53  
12 opinions come in is what she chose to 15:12:57  
13 exert but then what's in here is her best 15:13:02  
14 assessment of what FDA is saying. 15:13:08  
15 Q. So to the extent that you 15:13:11  
16 previously characterized anything she said 15:13:12  
17 in this e-mail, anything Mona said in this 15:13:15  
18 e-mail as her opinion, that would not be 15:13:19  
19 correct? 15:13:22  
20 MR. SAHAM: Objection to form. 15:13:22  
21 Misstates prior testimony. 15:13:24  
22 A. Well, yes. I mean, we -- I 15:13:25  
23 guess to the extent that we talk about the 15:13:28  
24 merits of these arguments, it would be 15:13:32  
25 what FDA is saying through Mona's summary 15:13:35

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1 E. Weiner  
2 further. 15:14:52  
3 Dr. Weiner, I would ask that you 15:14:54  
4 review the transcript and make any 15:14:57  
5 corrections and submit that back to 15:15:00  
6 your counsel if there are any 15:15:03  
7 corrections once you get the 15:15:04  
8 transcript. 15:15:07  
9 Could you do that for us? 15:15:07  
10 THE WITNESS: Sure. 15:15:08  
11 THE VIDEOGRAPHER: Please stand 15:15:09  
12 by. 15:15:11  
13 This concludes today's 15:15:11  
14 deposition. The time is 3:13 p.m. and 15:15:12  
15 we are off the record. 15:15:16  
16 (TIME NOTED: 3:13 p.m.)  
17  
18  
19  
20  
21  
22 \_\_\_\_\_  
23 (Signature of witness)  
24  
25

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|    |                               |                             |      |          |    |                               |          |  |          |
|----|-------------------------------|-----------------------------|------|----------|----|-------------------------------|----------|--|----------|
| 1  |                               |                             |      |          | 1  |                               |          |  |          |
| 2  |                               | *                           | *    | *        | 2  | I N D E X (continued)         |          |  |          |
| 3  |                               |                             |      |          | 3  | E X H I B I T S (continued)   |          |  |          |
| 4  |                               | I N D E X                   |      |          | 4  | PLAINTIFF'S DESCRIPTION PAGE  |          |  |          |
| 5  | WITNESS                       | EXAMINED BY                 | PAGE |          | 5  | Exhibit 169 E-mail dated      |          |  |          |
| 6  | E. Weiner                     | Mr. Saham                   | 5    |          | 6  | January 20, 2001              | 149      |  |          |
| 7  |                               | Mr. Weiss                   | 281  |          | 7  | Exhibit 170 Document entitled |          |  |          |
| 8  |                               |                             |      |          | 8  | FDA CLASS Assessment          | 174      |  |          |
| 9  |                               | E X H I B I T S             |      |          | 9  | Exhibit 171 E-mail dated      |          |  |          |
| 10 | PLAINTIFF'S                   | DESCRIPTION                 | PAGE |          | 10 | January 23, 2001              | 182      |  |          |
| 11 | Exhibit 162 E-mail dated      |                             |      |          | 11 | Exhibit 172 E-mail dated      |          |  |          |
| 12 | April 17, 2000                | 26                          |      |          | 12 | January 26, 2001              | 185      |  |          |
| 13 | Exhibit 163 E-mail dated      |                             |      |          | 13 | Exhibit 173 E-mail dated      |          |  |          |
| 14 | April 16, 2000                | 44                          |      |          | 14 | January 27, 2001              | 189      |  |          |
| 15 | Exhibit 164 E-mail dated      |                             |      |          | 15 | Exhibit 174 E-mail dated      |          |  |          |
| 16 | April 17, 2000                | 58                          |      |          | 16 | January 27, 2001              | 199      |  |          |
| 17 | Exhibit 165 E-mail dated      |                             |      |          | 17 | Exhibit 175 E-mail dated      |          |  |          |
| 18 | March 1, 2000                 | 87                          |      |          | 18 | April 19, 2001                | 207      |  |          |
| 19 | Exhibit 166 E-mail dated      |                             |      |          | 19 | Exhibit 176 E-mail dated      |          |  |          |
| 20 | March 26, 2000                | 97                          |      |          | 20 | August 28, 2001               | 210      |  |          |
| 21 | Exhibit 167 Document entitled |                             |      |          | 21 | Exhibit 177 E-mail dated      |          |  |          |
| 22 | U.S. Collaboration            |                             |      |          | 22 | April 8, 2001                 | 216      |  |          |
| 23 | Agreement                     | 104                         |      |          | 23 | Exhibit 178 E-mail dated      |          |  |          |
| 24 | Exhibit 168 E-mail dated      |                             |      |          | 24 | May 10, 2001                  | 228      |  |          |
| 25 | January 16, 2001              | 140                         |      |          | 25 |                               |          |  |          |
|    |                               |                             |      | Page 286 |    |                               |          |  | Page 287 |
| 1  |                               |                             |      |          | 1  |                               |          |  |          |
| 2  |                               | I N D E X (continued)       |      |          | 2  | I N D E X (continued)         |          |  |          |
| 3  |                               | E X H I B I T S (continued) |      |          | 3  | E X H I B I T S (continued)   |          |  |          |
| 4  | PLAINTIFF'S                   | DESCRIPTION                 | PAGE |          | 4  | PLAINTIFF'S DESCRIPTION PAGE  |          |  |          |
| 5  | Exhibit 179 E-mail dated      |                             |      |          | 5  | Exhibit 189 E-mail dated      |          |  |          |
| 6  | January 18, 2001              | 232                         |      |          | 6  | February 16, 2000             | 275      |  |          |
| 7  | Exhibit 180 E-mail dated      |                             |      |          | 7  | Exhibit 190 E-mail dated      |          |  |          |
| 8  | April 8, 2001                 | 237                         |      |          | 8  | August 20, 2001               | 275      |  |          |
| 9  | Exhibit 181 E-mail dated      |                             |      |          | 9  |                               |          |  |          |
| 10 | April 3, 2001                 | 240                         |      |          | 10 |                               |          |  |          |
| 11 | Exhibit 182 E-mail dated      |                             |      |          | 11 | * * *                         |          |  |          |
| 12 | September 5, 2001             | 243                         |      |          | 12 |                               | 15:15:35 |  |          |
| 13 | Exhibit 183 E-mail dated      |                             |      |          | 13 |                               |          |  |          |
| 14 | June 4, 2001                  | 251                         |      |          | 14 |                               |          |  |          |
| 15 | Exhibit 184 E-mail dated      |                             |      |          | 15 |                               |          |  |          |
| 16 | June 12, 2001                 | 256                         |      |          | 16 |                               |          |  |          |
| 17 | Exhibit 185 E-mail dated      |                             |      |          | 17 |                               |          |  |          |
| 18 | July 2, 2001                  | 261                         |      |          | 18 |                               |          |  |          |
| 19 | Exhibit 186 E-mail dated      |                             |      |          | 19 |                               |          |  |          |
| 20 | December 31, 2002             | 264                         |      |          | 20 |                               |          |  |          |
| 21 | Exhibit 187 E-mail dated      |                             |      |          | 21 |                               |          |  |          |
| 22 | July 27, 2001                 | 268                         |      |          | 22 |                               |          |  |          |
| 23 | Exhibit 188 E-mail dated      |                             |      |          | 23 |                               |          |  |          |
| 24 | August 27, 2003               | 271                         |      |          | 24 |                               |          |  |          |
| 25 |                               |                             |      | Page 288 | 25 |                               |          |  | Page 289 |



CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the  
State of New York, do hereby certify:

That the testimony in the within  
proceeding was held before me at the  
aforesaid time and place;

That said witness was duly sworn  
before the commencement of the testimony,  
and that the testimony was taken  
stenographically by me, then transcribed  
under my supervision, and that the within  
transcript is a true record of the  
testimony of said witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, that I am not  
interested directly or indirectly in the  
matter in controversy, nor am I in the  
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 5th day of October  
, 2010.

\_\_\_\_\_  
Wayne Hock

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# EXHIBIT 3

CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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ALASKA ELECTRICAL PENSION FUND,  
et al.,

Plaintiffs,

Civil No. 03-1519 (AET)

- against -

PHARMACIA CORPORATION, et al.,

Defendants.

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October 28, 2011  
9:05 a.m.

CONFIDENTIAL

Deposition of KENNETH M. LEHN, taken  
by Plaintiffs, pursuant to Notice, held at  
the offices of Simpson Thacher & Bartlett  
LLP, 425 Lexington Avenue, New York, New  
York, before Todd DeSimone, a Registered  
Professional Reporter and Notary Public of  
the State of New York.

Pages 1 - 398

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:<br/>2 ROBBINS GELLER RUDMAN &amp; DOWD LLP<br/>3 665 West Broadway<br/>4 Suite 1900<br/>5 San Diego, California 92101<br/>6 Attorneys for Plaintiffs<br/>7 BY: SCOTT H. SAHAM, ESQ.<br/>8 ssaham@rgdlaw.com<br/>9 LUCAS F. OLTS, ESQ.<br/>10 lolts@rgdlaw.com<br/>11<br/>12 SCOTT &amp; SCOTT<br/>13 707 Broadway<br/>14 Suite 1000<br/>15 San Diego, California 92101<br/>16 Attorneys for Plaintiffs<br/>17 BY: MATTHEW MONTGOMERY, ESQ.<br/>18 mmontgomery@scott-scott.com<br/>19<br/>20 MOTLEY RICE LLC<br/>21 28 Bridgeside Boulevard<br/>22 Mt. Pleasant, South Carolina 29464<br/>23 Attorneys for Plaintiffs<br/>24 BY: JOSHUA LITTLEJOHN, ESQ.<br/>25 jlittlejohn@motleyrice.com<br/>26<br/>27 SIMPSON THACHER &amp; BARTLETT LLP<br/>28 425 Lexington Avenue<br/>29 New York, New York 10017<br/>30 Attorneys for Defendants<br/>31 BY: GEORGE S. WANG, ESQ.<br/>32 gwang@stblaw.com<br/>33 SHANNON MCGOVERN, ESQ.<br/>34 smcgovern@stblaw.com<br/>35</p> | <p style="text-align: right;">Page 4</p> <p>1 LEHN - CONFIDENTIAL<br/>2 THE VIDEOGRAPHER: Good morning. 09:05:21AM<br/>3 We are now on the record. Please note 09:05:22AM<br/>4 that the microphones are sensitive and may 09:05:25AM<br/>5 pick up whispering and private 09:05:27AM<br/>6 conversations. Please turn off all cell 09:05:29AM<br/>7 phones or place them away from the 09:05:31AM<br/>8 microphones as they can interfere with the 09:05:33AM<br/>9 deposition audio. Recording will continue 09:05:35AM<br/>10 until all parties agree to go off the 09:05:37AM<br/>11 record. 09:05:38AM<br/>12 My name is Pete Cooper 09:05:39AM<br/>13 representing Veritext Los Angeles. The 09:05:40AM<br/>14 date today is October 28th, 2011 and the 09:05:42AM<br/>15 time is approximately 9:05 a.m. 09:05:45AM<br/>16 This deposition is being held 09:05:49AM<br/>17 at Simpson Thacher &amp; Bartlett, located at 09:05:50AM<br/>18 425 Lexington Avenue in New York, New York 09:05:56AM<br/>19 and is being taken by counsel for the 09:05:58AM<br/>20 plaintiffs. The caption of this case is 09:06:00AM<br/>21 Alaska Electrical Pension Fund, et al, 09:06:02AM<br/>22 versus Pharmacia Corporation, et al. This 09:06:07AM<br/>23 case is filed in the United States 09:06:10AM<br/>24 District Court, District of New Jersey, 09:06:12AM<br/>25 Civil Action Number 03-1519. The name of 09:06:15AM</p> |
| <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: (Continued)<br/>2 DLA PIPER LLP (US)<br/>3 1251 Avenue of the Americas<br/>4 New York, New York 10020-1104<br/>5 Attorneys for Defendants<br/>6 BY: MICHAEL S. WIGOTSKY, esq.<br/>7 michael.wigotsky@dlapiper.com<br/>8<br/>9<br/>10 ALSO PRESENT:<br/>11 PETER COOPER, Videographer<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p style="text-align: right;">Page 5</p> <p>1 LEHN - CONFIDENTIAL<br/>2 the witness is Ken Lehn. 09:06:20AM<br/>3 At this time the attorneys 09:06:22AM<br/>4 present in the room and attending remotely 09:06:23AM<br/>5 will identify themselves and the parties 09:06:25AM<br/>6 they represent. 09:06:27AM<br/>7 MR. WANG: George Wang, counsel 09:06:28AM<br/>8 for defendants. 09:06:30AM<br/>9 MR. WIGOTSKY: Mike Wigotsky, 09:06:31AM<br/>10 counsel for defendants. 09:06:32AM<br/>11 MS. MCGOVERN: Shannon McGovern 09:06:33AM<br/>12 for defendants. 09:06:34AM<br/>13 MR. LITTLEJOHN: Josh 09:06:37AM<br/>14 Littlejohn for the plaintiffs. 09:06:39AM<br/>15 MR. MONTGOMERY: Matt 09:06:39AM<br/>16 Montgomery for the plaintiffs. 09:06:40AM<br/>17 MR. OLTS: Lucas Olts for the 09:06:41AM<br/>18 plaintiffs. 09:06:42AM<br/>19 MR. SAHAM: Scott Saham for the 09:06:43AM<br/>20 plaintiffs. 09:06:44AM<br/>21 THE VIDEOGRAPHER: Our court 09:06:45AM<br/>22 reporter, Todd DeSimone, representing 09:06:46AM<br/>23 Veritext, will swear in the witness and we 09:06:48AM<br/>24 can proceed. 09:06:49AM<br/>25 * * *</p>                                                                                                                                                                                                                                                                                    |

2 (Pages 2 to 5)

## CONFIDENTIAL

| Page 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 KENNETH M. LEHN,</p> <p>3 called as a witness, having been first</p> <p>4 duly sworn, was examined and testified</p> <p>5 as follows:</p> <p>6 EXAMINATION BY MR. SAHAM: 09:06:56AM</p> <p>7 Q. Good morning, Dr. Lehn. 09:06:56AM</p> <p>8 A. Good morning. 09:06:58AM</p> <p>9 Q. I want to show you what I have 09:06:59AM</p> <p>10 marked as Plaintiffs' Exhibit 500. Could 09:07:00AM</p> <p>11 you take a look at that document. 09:07:03AM</p> <p>12 (Plaintiffs' Exhibit 500 marked 09:07:05AM</p> <p>13 for identification.) 09:07:07AM</p> <p>14 Q. And do you recognize what I 09:07:23AM</p> <p>15 have marked as Plaintiffs' Exhibit 500? 09:07:24AM</p> <p>16 A. Right. This is my report that 09:07:26AM</p> <p>17 I filed on June 7th, 2011, with the one 09:07:28AM</p> <p>18 caveat that I haven't checked every page, 09:07:31AM</p> <p>19 but it does appear to be my full report. 09:07:33AM</p> <p>20 Q. And why did you prepare this 09:07:35AM</p> <p>21 report? 09:07:38AM</p> <p>22 A. I was retained by counsel for 09:07:38AM</p> <p>23 the defendants to offer opinions in this 09:07:40AM</p> <p>24 matter. 09:07:43AM</p> <p>25 Q. And does this report set forth 09:07:43AM</p>                            | <p>1 LEHN - CONFIDENTIAL</p> <p>2 opinions? 09:08:32AM</p> <p>3 A. That's correct. 09:08:33AM</p> <p>4 Q. And looking at your report, 09:08:33AM</p> <p>5 which I have marked as Exhibit 500, could 09:08:35AM</p> <p>6 you turn to Exhibit 4 of the report. And 09:08:37AM</p> <p>7 could you just tell me what Exhibit 4 is? 09:08:58AM</p> <p>8 A. Exhibit 4 summarizes the 09:09:00AM</p> <p>9 residual returns that I calculated for 09:09:02AM</p> <p>10 Pharmacia's common stock using the event 09:09:05AM</p> <p>11 study methodology during the class period 09:09:08AM</p> <p>12 of April 17th, 2000 through August 5th, 09:09:10AM</p> <p>13 2001. 09:09:14AM</p> <p>14 Q. And can you briefly describe 09:09:14AM</p> <p>15 what the event study methodology is and 09:09:16AM</p> <p>16 why you used it in this case. 09:09:18AM</p> <p>17 A. Sure. The event study 09:09:20AM</p> <p>18 methodology is a technique that is widely 09:09:21AM</p> <p>19 used in the academic literature and one 09:09:23AM</p> <p>20 that I've used frequently in the academic 09:09:25AM</p> <p>21 literature as well as in the context of 09:09:28AM</p> <p>22 litigation, and it is a technique that 09:09:30AM</p> <p>23 allows one to determine the relation 09:09:33AM</p> <p>24 between the release of information on a 09:09:37AM</p> <p>25 given day and changes in the underlying 09:09:39AM</p> |
| Page 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 your opinions? 09:07:45AM</p> <p>3 A. It did as of the date of June 09:07:46AM</p> <p>4 7th, 2011, and then subsequent to that I 09:07:49AM</p> <p>5 formed opinions as to the work that Dr. 09:07:52AM</p> <p>6 Feinstein has done. 09:07:55AM</p> <p>7 Q. And are those opinions 09:07:57AM</p> <p>8 expressed in your rebuttal report? 09:07:59AM</p> <p>9 A. They are. 09:08:00AM</p> <p>10 Q. And do the reports, both what I 09:08:01AM</p> <p>11 have marked as 500 and your rebuttal 09:08:05AM</p> <p>12 report, do those set out the bases for 09:08:07AM</p> <p>13 your opinions that you are going to be 09:08:09AM</p> <p>14 offering in this case? 09:08:12AM</p> <p>15 A. They do. 09:08:12AM</p> <p>16 Q. And the methodologies as well? 09:08:13AM</p> <p>17 A. They do. 09:08:15AM</p> <p>18 Q. In addition to the opinions and 09:08:16AM</p> <p>19 bases and methodologies set out in those 09:08:19AM</p> <p>20 reports, do you intend to offer any other 09:08:21AM</p> <p>21 opinions in this case? 09:08:23AM</p> <p>22 A. Not unless I'm asked to by 09:08:25AM</p> <p>23 counsel. 09:08:28AM</p> <p>24 Q. And as we sit here today you 09:08:28AM</p> <p>25 have not been asked to offer any other 09:08:31AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 security price on that date. 09:09:43AM</p> <p>3 And it allows you to not only 09:09:46AM</p> <p>4 quantify the potential impact that the 09:09:49AM</p> <p>5 release of information had on a security 09:09:52AM</p> <p>6 price, but to determine whether or not the 09:09:54AM</p> <p>7 change in the security price was 09:09:57AM</p> <p>8 statistically significant. 09:09:58AM</p> <p>9 Q. And is your event study that 09:10:00AM</p> <p>10 you did in this case, does that form the 09:10:04AM</p> <p>11 bases for your opinions regarding 09:10:06AM</p> <p>12 materiality and loss causation that you 09:10:07AM</p> <p>13 are offering? 09:10:09AM</p> <p>14 A. It does. There's additional 09:10:16AM</p> <p>15 work that I did as well. But it is the 09:10:18AM</p> <p>16 basis for the opinion, that is correct. 09:10:21AM</p> <p>17 Q. And if you didn't do the event 09:10:25AM</p> <p>18 study in regression analysis, would you 09:10:26AM</p> <p>19 have been able to offer an opinion 09:10:30AM</p> <p>20 regarding loss causation and materiality 09:10:32AM</p> <p>21 in this case? 09:10:33AM</p> <p>22 MR. WANG: Objection to form. 09:10:34AM</p> <p>23 A. Well, it is my opinion that the 09:10:36AM</p> <p>24 most appropriate way to test for loss 09:10:43AM</p> <p>25 causation in a securities matter is to 09:10:45AM</p>           |

3 (Pages 6 to 9)



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| Page 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 conduct event study analysis. If in fact 09:10:47AM</p> <p>3 one was unable to do an event study, as I 09:10:53AM</p> <p>4 sit here, I'm not aware of how one could 09:10:56AM</p> <p>5 form an opinion that would be consistent 09:10:59AM</p> <p>6 with accepted practice in the scientific 09:11:01AM</p> <p>7 literature. 09:11:03AM</p> <p>8 Q. So you are not aware of any 09:11:04AM</p> <p>9 other reliable methodology that would 09:11:05AM</p> <p>10 allow one to opine regarding loss 09:11:08AM</p> <p>11 causation and materiality in the context 09:11:11AM</p> <p>12 of a securities lawsuit such as this one? 09:11:13AM</p> <p>13 MR. WANG: Objection to form. 09:11:16AM</p> <p>14 A. Again, the way that I approach 09:11:17AM</p> <p>15 these matters is to conform with accepted 09:11:21AM</p> <p>16 practice in the scientific literature and 09:11:24AM</p> <p>17 finance, which is where my expertise lies. 09:11:27AM</p> <p>18 Now, whether or not there are other ways 09:11:30AM</p> <p>19 to do it using other expertise is 09:11:32AM</p> <p>20 something I don't have an opinion on. 09:11:35AM</p> <p>21 But within the area of my 09:11:37AM</p> <p>22 expertise, event study analysis is the 09:11:40AM</p> <p>23 only way that I know of to scientifically 09:11:44AM</p> <p>24 test whether there is loss causation. 09:11:46AM</p> <p>25 Q. And are you aware of any other 09:11:48AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 day. 09:12:47AM</p> <p>3 The NYSE index return is the 09:12:49AM</p> <p>4 percentage change in the value of the NYSE 09:12:51AM</p> <p>5 composite index on that date. The 09:12:55AM</p> <p>6 industry index return is the percentage 09:12:58AM</p> <p>7 change in the industry index that I used 09:13:01AM</p> <p>8 in my analysis. The PHA residual return 09:13:05AM</p> <p>9 is derived from the regression model which 09:13:11AM</p> <p>10 basically is tracking how Pharmacia's 09:13:17AM</p> <p>11 stock typically moves with both the New 09:13:22AM</p> <p>12 York Stock Exchange index and the peer 09:13:25AM</p> <p>13 index, and then based on that and based on 09:13:26AM</p> <p>14 the percent changes in the two indexes, 09:13:28AM</p> <p>15 one can calculate the residual return, and 09:13:30AM</p> <p>16 effectively it's the difference between 09:13:33AM</p> <p>17 the actual return on that date and the 09:13:35AM</p> <p>18 return predicted by the regression model. 09:13:38AM</p> <p>19 And the way that I've identified it in 09:13:42AM</p> <p>20 this case is by using indicator variables 09:13:43AM</p> <p>21 for each day, so a dummy variable that 09:13:47AM</p> <p>22 identifies what the residual return is 09:13:49AM</p> <p>23 that day. 09:13:51AM</p> <p>24 And then the last column is a 09:13:52AM</p> <p>25 t-statistic, which is -- which tells you 09:13:54AM</p>   |
| Page 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 peer-reviewed methodologies that could be 09:11:50AM</p> <p>3 utilized to test for loss causation in 09:11:53AM</p> <p>4 this context? 09:11:56AM</p> <p>5 A. No. 09:11:56AM</p> <p>6 Q. Now, looking at Exhibit 4, the 09:11:56AM</p> <p>7 summary of your residual returns, there is 09:12:01AM</p> <p>8 various columns up at the top; is that 09:12:04AM</p> <p>9 correct? 09:12:06AM</p> <p>10 A. That's correct. 09:12:06AM</p> <p>11 Q. And just starting at the left 09:12:07AM</p> <p>12 where it says date, I think that one may 09:12:09AM</p> <p>13 be self-explanatory. But can you just 09:12:12AM</p> <p>14 describe what each of the columns report? 09:12:17AM</p> <p>15 A. Sure. The first column is the 09:12:18AM</p> <p>16 date, so that's the date on which I'm 09:12:19AM</p> <p>17 measuring the residual return. The second 09:12:21AM</p> <p>18 column is Pharmacia's closing stock price 09:12:23AM</p> <p>19 on that date. And then the next column is 09:12:27AM</p> <p>20 the trading volume in Pharmacia's common 09:12:29AM</p> <p>21 stock on that date. The next column is 09:12:36AM</p> <p>22 Pharmacia's stock return on that date, 09:12:39AM</p> <p>23 which is the percentage change in its 09:12:41AM</p> <p>24 closing price, stock price, as compared to 09:12:44AM</p> <p>25 the closing stock price on the previous 09:12:46AM</p>                                                  | <p>1 LEHN - CONFIDENTIAL</p> <p>2 whether or not the residual return that 09:13:58AM</p> <p>3 you've estimated is statistically 09:14:00AM</p> <p>4 significant, meaning whether or not it is 09:14:02AM</p> <p>5 within the bounds of normal variation or 09:14:05AM</p> <p>6 whether it is outside the bounds of normal 09:14:07AM</p> <p>7 variation. And a t-statistic of 1.96 or 09:14:09AM</p> <p>8 greater, in the case of a negative 09:14:13AM</p> <p>9 t-statistic, 1.96 or even more negative, 09:14:17AM</p> <p>10 would allow one to conclude that the 09:14:22AM</p> <p>11 residual return is statistically 09:14:23AM</p> <p>12 significant at the 5 percent level. 09:14:25AM</p> <p>13 Q. Could you calculate a p-value 09:14:28AM</p> <p>14 from the information on this table? 09:14:31AM</p> <p>15 A. You could -- you would -- most 09:14:35AM</p> <p>16 people would need to refer to a table that 09:14:41AM</p> <p>17 would map the t-statistic into a p-value, 09:14:43AM</p> <p>18 or when you run the computer model, the 09:14:46AM</p> <p>19 computer will give you the t-statistic and 09:14:48AM</p> <p>20 the p-value. 09:14:51AM</p> <p>21 So you could do it, but you 09:14:52AM</p> <p>22 can't -- you can only guess at it based on 09:14:53AM</p> <p>23 the data that I have here in Exhibit 4. 09:14:56AM</p> <p>24 Q. But you certainly could 09:14:58AM</p> <p>25 calculate that if you were inclined? 09:14:59AM</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Sure, absolutely. It is 09:15:01AM</p> <p>3 calculated. I did calculate it. It is 09:15:02AM</p> <p>4 just that I didn't report it in this 09:15:04AM</p> <p>5 particular exhibit. The t-statistic is 09:15:05AM</p> <p>6 sufficient for determining whether or not 09:15:09AM</p> <p>7 the residual return is significant at the 09:15:10AM</p> <p>8 5 percent level. 09:15:13AM</p> <p>9 Q. And then you said you would 09:15:14AM</p> <p>10 need 1.96 either negative or positive to 09:15:15AM</p> <p>11 be statistically significant at a 0.05 09:15:20AM</p> <p>12 threshold? 09:15:26AM</p> <p>13 A. Correct. 09:15:26AM</p> <p>14 Q. And what about to be 09:15:26AM</p> <p>15 statistically significant at a 0.1 09:15:28AM</p> <p>16 threshold, what t-statistic would that 09:15:32AM</p> <p>17 correlate with? 09:15:34AM</p> <p>18 MR. WANG: Objection to form. 09:15:35AM</p> <p>19 A. And 0.1 meaning a 10 percent 09:15:36AM</p> <p>20 significance level? 09:15:39AM</p> <p>21 Q. Correct. 09:15:39AM</p> <p>22 A. Then it would be roughly using 09:15:40AM</p> <p>23 a so-called two-tailed test, 1.65. 09:15:42AM</p> <p>24 Q. And did you use a two-tailed 09:15:45AM</p> <p>25 test or a one-tail test? 09:15:47AM</p>                                                                                                                                 | <p style="text-align: right;">Page 16</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 specifically looking at the returns for -- 09:16:46AM</p> <p>3 starting with February 6th, is it accurate 09:16:50AM</p> <p>4 that the real decline for Pharmacia stock 09:16:52AM</p> <p>5 on the day of February 6th is a little bit 09:16:58AM</p> <p>6 over 1 percent or negative 1.08 percent; 09:17:00AM</p> <p>7 is that correct? 09:17:04AM</p> <p>8 A. Correct. The return for 09:17:04AM</p> <p>9 Pharmacia on February 6th is a negative 09:17:06AM</p> <p>10 1.08 percent. 09:17:10AM</p> <p>11 Q. And that's because the stock 09:17:11AM</p> <p>12 declined 63 cents that day; is that 09:17:12AM</p> <p>13 correct? 09:17:18AM</p> <p>14 A. That is correct. 09:17:18AM</p> <p>15 Q. And the return for February 7th 09:17:19AM</p> <p>16 is a negative 2.64 percent; is that 09:17:23AM</p> <p>17 correct? 09:17:26AM</p> <p>18 A. That is correct. 09:17:26AM</p> <p>19 Q. And that's because the stock 09:17:27AM</p> <p>20 declined \$1.52 that day; is that correct? 09:17:28AM</p> <p>21 A. That is correct. 09:17:32AM</p> <p>22 Q. And for February 8th the 09:17:32AM</p> <p>23 decline was negative 5.58 percent; is that 09:17:34AM</p> <p>24 correct? 09:17:37AM</p> <p>25 A. That is correct. 09:17:37AM</p>                                                                                       |
| <p style="text-align: right;">Page 15</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Two-tailed test here. 09:15:49AM</p> <p>3 Q. So then if you were looking to 09:15:50AM</p> <p>4 determine whether something was 09:15:51AM</p> <p>5 statistically significant at a 10 percent 09:15:53AM</p> <p>6 threshold, you would need a 1.65 or a 09:15:55AM</p> <p>7 negative 1.65 in the t-stat on your table? 09:15:58AM</p> <p>8 MR. WANG: Objection to form. 09:16:02AM</p> <p>9 A. Can you repeat the question? 09:16:03AM</p> <p>10 Q. My question -- I'm sorry if it 09:16:04AM</p> <p>11 was a bad question -- if you were looking 09:16:06AM</p> <p>12 to determine whether something was 09:16:07AM</p> <p>13 statistically significant at a 10 percent 09:16:09AM</p> <p>14 threshold level, you would need to 09:16:11AM</p> <p>15 determine whether the t-statistic was 09:16:13AM</p> <p>16 greater than 0.165 or, if in a negative 09:16:16AM</p> <p>17 context, more negative than 1.65; is that 09:16:20AM</p> <p>18 accurate? 09:16:24AM</p> <p>19 MR. WANG: Objection to form. 09:16:24AM</p> <p>20 A. Again, the t-statistic for the 09:16:25AM</p> <p>21 10 percent confidence level using a 09:16:27AM</p> <p>22 two-tailed test would be 1.65. 09:16:29AM</p> <p>23 Q. And could you look at page 6 of 09:16:31AM</p> <p>24 Exhibit 4. You have the page numbers down 09:16:34AM</p> <p>25 in the bottom right-hand corner. And 09:16:37AM</p> | <p style="text-align: right;">Page 17</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And that is because the stock 09:17:39AM</p> <p>3 declined \$3.13 on February 8th, 2001? 09:17:41AM</p> <p>4 A. That is correct. 09:17:44AM</p> <p>5 Q. You did, at some point during 09:17:48AM</p> <p>6 your engagement in this case, you did an 09:17:50AM</p> <p>7 analysis of the three-day window February 09:17:55AM</p> <p>8 6th through February 8th; is that correct? 09:17:57AM</p> <p>9 MR. WANG: Objection to form. 09:17:59AM</p> <p>10 A. I don't recall offhand whether 09:18:00AM</p> <p>11 I did a three-day window. 09:18:01AM</p> <p>12 Q. In your rebuttal report I think 09:18:03AM</p> <p>13 you looked at a three-day window. Does 09:18:05AM</p> <p>14 that refresh your recollection? 09:18:07AM</p> <p>15 A. That is correct. 09:18:08AM</p> <p>16 Q. And is it correct when you look 09:18:08AM</p> <p>17 at the three-day window from February 6th 09:18:10AM</p> <p>18 to February 8th the decline in Pharmacia 09:18:12AM</p> <p>19 stock is statistically significant for 09:18:15AM</p> <p>20 those three days? 09:18:17AM</p> <p>21 A. That is correct. 09:18:18AM</p> <p>22 Q. And what does it mean to be 09:18:18AM</p> <p>23 statistically significant? 09:18:20AM</p> <p>24 A. It means that you can be 09:18:21AM</p> <p>25 confident that what you are observing is 09:18:23AM</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 not random and if it is not random the 09:18:27AM</p> <p>3 inference that is typically drawn is that 09:18:31AM</p> <p>4 the change in the company's securities 09:18:34AM</p> <p>5 price was associated with the release of 09:18:36AM</p> <p>6 information during that, in this case, 09:18:39AM</p> <p>7 three-day window. 09:18:41AM</p> <p>8 Q. So it is your opinion that 09:18:42AM</p> <p>9 looking at the three days between February 09:18:44AM</p> <p>10 6th and February 8th the decline in 09:18:46AM</p> <p>11 Pharmacia stock was not due to random 09:18:49AM</p> <p>12 fluctuation; is that correct? 09:18:51AM</p> <p>13 MR. WANG: Objection to form. 09:18:53AM</p> <p>14 A. I wouldn't quite put it that 09:18:54AM</p> <p>15 way. I think that what you can say is 09:18:57AM</p> <p>16 that using the three-day window there was 09:18:59AM</p> <p>17 a statistically significant decline, but 09:19:02AM</p> <p>18 when you decompose the three-day window 09:19:05AM</p> <p>19 into individual days I find that there's 09:19:08AM</p> <p>20 only one day that is statistically 09:19:11AM</p> <p>21 significant and that is February 8th. 09:19:13AM</p> <p>22 Q. But if you were going to look 09:19:15AM</p> <p>23 at the three days as a whole, and I 09:19:17AM</p> <p>24 understand it is your opinion that you 09:19:19AM</p> <p>25 don't believe that that is correct, but if 09:19:20AM</p> | <p style="text-align: right;">Page 20</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. In the second interrogatory 09:20:27AM</p> <p>3 response, that's correct. 09:20:29AM</p> <p>4 Q. So you took these five facts 09:20:30AM</p> <p>5 from plaintiffs' interrogatory response 09:20:32AM</p> <p>6 describing the plaintiffs' allegations in 09:20:34AM</p> <p>7 this case; is that correct? 09:20:36AM</p> <p>8 A. That is correct. 09:20:37AM</p> <p>9 Q. And as part of your engagement, 09:20:38AM</p> <p>10 did you review the media and other 09:20:42AM</p> <p>11 publicly available materials that -- 09:20:44AM</p> <p>12 strike that. 09:20:48AM</p> <p>13 As part of your engagement, did 09:20:49AM</p> <p>14 you look at what was disclosed during the 09:20:50AM</p> <p>15 class period prior to February 6th, 2001? 09:20:52AM</p> <p>16 A. I did, yes. 09:20:55AM</p> <p>17 Q. And did you find in any 09:20:56AM</p> <p>18 publicly available document a disclosure 09:20:59AM</p> <p>19 of any of these five facts listed here in 09:21:02AM</p> <p>20 paragraph 72 prior to February 6th, 2001? 09:21:04AM</p> <p>21 MR. WANG: Objection to form. 09:21:07AM</p> <p>22 A. Not that I recall. There was 09:21:08AM</p> <p>23 information in the public press and 09:21:32AM</p> <p>24 analyst reports that this was more than a 09:21:34AM</p> <p>25 six-month trial, but in terms of the 09:21:36AM</p>    |
| <p style="text-align: right;">Page 19</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 you were going to look at the three days, 09:19:21AM</p> <p>3 it would be your opinion, or if the court 09:19:23AM</p> <p>4 required you to look at the three days, 09:19:27AM</p> <p>5 say, you would be of the opinion that the 09:19:29AM</p> <p>6 decline cumulatively over those three days 09:19:31AM</p> <p>7 was not due to random fluctuation; is that 09:19:34AM</p> <p>8 correct? 09:19:36AM</p> <p>9 MR. WANG: Objection to form. 09:19:36AM</p> <p>10 Asked and answered. 09:19:38AM</p> <p>11 A. Taken as a whole, that would be 09:19:39AM</p> <p>12 correct. But, again, I think the more 09:19:41AM</p> <p>13 relevant issue is within that three-day 09:19:43AM</p> <p>14 window what can you say about the 09:19:46AM</p> <p>15 likelihood of price movements being random 09:19:48AM</p> <p>16 or nonrandom, and the only day that you 09:19:51AM</p> <p>17 could be confident that what you are 09:19:54AM</p> <p>18 observing was not random would be February 09:19:56AM</p> <p>19 8th. 09:19:58AM</p> <p>20 Q. Now, could you turn to 09:19:58AM</p> <p>21 paragraph 72 of your report. And 09:20:05AM</p> <p>22 specifically at paragraph 72 you recount I 09:20:15AM</p> <p>23 believe five facts that plaintiffs allege 09:20:20AM</p> <p>24 were not disclosed prior to February 6th, 09:20:23AM</p> <p>25 2001; is that correct? 09:20:26AM</p>                                                 | <p style="text-align: right;">Page 21</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 language in point number 1, I don't recall 09:21:40AM</p> <p>3 seeing news stories to that effect. 09:21:42AM</p> <p>4 Q. And on the first day of the 09:21:46AM</p> <p>5 class period, the press release that 09:21:48AM</p> <p>6 plaintiffs allege was false and 09:21:50AM</p> <p>7 misleading, that document actually 09:21:52AM</p> <p>8 discloses that the trial was longer than 09:21:54AM</p> <p>9 13 months, or, I'm sorry, longer than six 09:21:56AM</p> <p>10 months, that it was a 13-month trial? 09:22:00AM</p> <p>11 A. That is correct. 09:22:01AM</p> <p>12 Q. And what it doesn't disclose 09:22:02AM</p> <p>13 and what plaintiffs allege it doesn't 09:22:03AM</p> <p>14 disclose is what the post six-month data 09:22:04AM</p> <p>15 revealed; is that correct? 09:22:07AM</p> <p>16 A. That's my understanding. 09:22:08AM</p> <p>17 Q. And you are not offering an 09:22:09AM</p> <p>18 opinion in this case that the post 09:22:11AM</p> <p>19 six-month data was available to the public 09:22:13AM</p> <p>20 prior to February 6th, 2001; is that 09:22:16AM</p> <p>21 correct? 09:22:19AM</p> <p>22 A. That is correct. I'm not 09:22:19AM</p> <p>23 offering such an opinion. 09:22:20AM</p> <p>24 Q. And you are not offering an 09:22:22AM</p> <p>25 opinion that any of these specific five 09:22:24AM</p> |

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| Page 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 facts listed in paragraph 72 were 09:22:27AM</p> <p>3 available to the marketplace prior to 09:22:29AM</p> <p>4 February 6th, 2001, correct? 09:22:31AM</p> <p>5 A. That is correct. 09:22:33AM</p> <p>6 Q. And in paragraph 73, you state, 09:22:33AM</p> <p>7 and I will just read from the report, 09:22:38AM</p> <p>8 "Each of these facts" -- the facts listed 09:22:40AM</p> <p>9 in paragraph 72 -- "was ascertainable from 09:22:42AM</p> <p>10 the information posted on the FDA website 09:22:45AM</p> <p>11 on the morning of February 6th, 2001." 09:22:48AM</p> <p>12 Is that at least a portion of 09:22:52AM</p> <p>13 your opinion in this case? 09:22:55AM</p> <p>14 A. That is correct. 09:22:55AM</p> <p>15 Q. And you used the word 09:22:56AM</p> <p>16 "ascertainable"; is that correct? 09:22:57AM</p> <p>17 A. That is correct. 09:22:58AM</p> <p>18 Q. And why did you use the word 09:22:59AM</p> <p>19 "ascertainable"? 09:23:00AM</p> <p>20 A. Well, in the sense that I don't 09:23:01AM</p> <p>21 recall seeing in the FDA briefing 09:23:03AM</p> <p>22 materials that were released on the 09:23:05AM</p> <p>23 morning of February 6th language that 09:23:07AM</p> <p>24 directly corresponded to the language in 09:23:09AM</p> <p>25 the five points in paragraph 72. 09:23:11AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 (Plaintiffs' Exhibit 502 marked 09:25:22AM</p> <p>3 for identification.) 09:25:24AM</p> <p>4 Q. Could you please take a look at 09:25:33AM</p> <p>5 Exhibit 502. And, similarly, Exhibit 502 09:25:35AM</p> <p>6 is another journal article you referenced 09:25:41AM</p> <p>7 in your report; is that correct? 09:25:43AM</p> <p>8 A. That is correct. 09:25:44AM</p> <p>9 Q. And, again, you are not 09:25:44AM</p> <p>10 offering an opinion in this case that this 09:25:46AM</p> <p>11 journal article discloses any of the five 09:25:49AM</p> <p>12 facts referenced in paragraph 72 of your 09:25:51AM</p> <p>13 report? 09:25:53AM</p> <p>14 A. That's correct. 09:25:53AM</p> <p>15 Q. I want to show you what I'm 09:25:53AM</p> <p>16 marking as Plaintiffs' Exhibit 503. 09:26:16AM</p> <p>17 (Plaintiffs' Exhibit 503 marked 09:26:20AM</p> <p>18 for identification.) 09:26:22AM</p> <p>19 Q. Could you please take a look at 09:27:28AM</p> <p>20 Exhibit 503 which, for the record, is a 09:27:29AM</p> <p>21 Journal of Financial Economics article 09:27:34AM</p> <p>22 from 1984 by Patell and Wolfson titled 09:27:37AM</p> <p>23 "The Intraday Speed of Adjustment of Stock 09:27:42AM</p> <p>24 Prices to Earnings and Dividend 09:27:45AM</p> <p>25 Announcements." 09:27:47AM</p> |
| Page 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 But there was statistical 09:23:14AM</p> <p>3 information in the tables, primarily in 09:23:16AM</p> <p>4 the statistical review briefing document, 09:23:20AM</p> <p>5 that would have allowed anyone to 09:23:23AM</p> <p>6 basically infer the information that was 09:23:26AM</p> <p>7 contained in paragraph 72. 09:23:29AM</p> <p>8 Q. I want to show you what I'm 09:23:31AM</p> <p>9 marking as Plaintiffs' Exhibit 501. 09:23:39AM</p> <p>10 (Plaintiffs' Exhibit 501 marked 09:23:47AM</p> <p>11 for identification.) 09:23:49AM</p> <p>12 Q. Dr. Lehn, Exhibit 501, this is 09:24:22AM</p> <p>13 a journal article that you reference in 09:24:53AM</p> <p>14 your report; is that correct? 09:24:54AM</p> <p>15 A. That is correct. 09:24:56AM</p> <p>16 Q. And you are not, again, and I 09:24:56AM</p> <p>17 think this is just retracing ground we 09:24:59AM</p> <p>18 just already covered, you are not offering 09:25:01AM</p> <p>19 an opinion that what I've marked as 09:25:02AM</p> <p>20 Exhibit 501 discloses any of the five 09:25:05AM</p> <p>21 facts that are listed in Exhibit 72, 09:25:07AM</p> <p>22 correct? 09:25:10AM</p> <p>23 A. That is correct. 09:25:10AM</p> <p>24 Q. I want to show you what I'm 09:25:10AM</p> <p>25 marking as Plaintiffs' Exhibit 502. 09:25:20AM</p>       | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Do you recognize this journal 09:27:48AM</p> <p>3 article? 09:27:49AM</p> <p>4 A. I do. 09:27:49AM</p> <p>5 Q. And this is a journal article 09:27:50AM</p> <p>6 that you relied on in your report at least 09:27:51AM</p> <p>7 in part for the bases of your opinion; is 09:27:55AM</p> <p>8 that correct? 09:27:58AM</p> <p>9 A. I cite the article, that's 09:27:58AM</p> <p>10 correct. 09:28:00AM</p> <p>11 Q. And is this a well-known piece 09:28:00AM</p> <p>12 of economic literature in the area of, you 09:28:02AM</p> <p>13 know, that you are opining on here today? 09:28:06AM</p> <p>14 That's a really bad question. 09:28:08AM</p> <p>15 Could you just briefly describe 09:28:10AM</p> <p>16 this article and why you cited it? 09:28:11AM</p> <p>17 A. Sure. This was an article that 09:28:14AM</p> <p>18 Patell and Wolfson published in 1984, and 09:28:17AM</p> <p>19 it was one of the first, if not the first, 09:28:20AM</p> <p>20 systematic study of how quickly stock 09:28:23AM</p> <p>21 prices react within a trading day to the 09:28:26AM</p> <p>22 release of information, and the 09:28:29AM</p> <p>23 information that they were looking at 09:28:31AM</p> <p>24 were -- was information about earnings and 09:28:33AM</p> <p>25 dividends. 09:28:35AM</p>            |

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| <p style="text-align: right;">Page 26</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And specifically the public 09:28:36AM</p> <p>3 announcement of earnings and dividends? 09:28:39AM</p> <p>4 A. That is correct. 09:28:41AM</p> <p>5 Q. And what form does a dividend 09:28:42AM</p> <p>6 announcement usually take? 09:28:44AM</p> <p>7 A. I've never studied the form of 09:28:47AM</p> <p>8 the announcement, but, you know, typically 09:28:50AM</p> <p>9 boards of directors would approve a change 09:28:53AM</p> <p>10 in dividend policy and it has always been 09:28:56AM</p> <p>11 my understanding that that information 09:29:00AM</p> <p>12 would be released typically through a 09:29:02AM</p> <p>13 press release issued by the company. 09:29:04AM</p> <p>14 Q. And do you have just sort of, 09:29:06AM</p> <p>15 given your expertise and the number of 09:29:09AM</p> <p>16 years you have been working in the finance 09:29:11AM</p> <p>17 and securities realm, how long a dividend 09:29:13AM</p> <p>18 press release usually is? 09:29:17AM</p> <p>19 A. You know, it is often 09:29:20AM</p> <p>20 commingled with other information. So if 09:29:23AM</p> <p>21 it was only a dividend announcement, it 09:29:26AM</p> <p>22 may not be very long. But if it is 09:29:31AM</p> <p>23 commingled with other information, it 09:29:33AM</p> <p>24 could be a lengthy press release. 09:29:35AM</p> <p>25 Q. And the information about a 09:29:36AM</p> | <p style="text-align: right;">Page 28</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 dividends claiming that a dividend change 09:30:38AM</p> <p>3 per se, you know, in a world in which you 09:30:40AM</p> <p>4 abstract away from taxes and other 09:30:43AM</p> <p>5 considerations, doesn't change the value 09:30:45AM</p> <p>6 of the equity because what it does is it 09:30:46AM</p> <p>7 just moves more cash out but now the firm 09:30:49AM</p> <p>8 has greater -- has less capital 09:30:51AM</p> <p>9 appreciation. 09:30:54AM</p> <p>10 So for years Microsoft never 09:30:55AM</p> <p>11 paid a dividend, but there was a lot of 09:30:57AM</p> <p>12 equity value there because of the capital 09:30:59AM</p> <p>13 appreciation. So the dividend per se may 09:31:01AM</p> <p>14 not be what matters to the market in 09:31:06AM</p> <p>15 revaluing the security, but what matters 09:31:09AM</p> <p>16 is the reason for the dividend change, 09:31:11AM</p> <p>17 does the dividend change signal something 09:31:13AM</p> <p>18 about the future. And that can be 09:31:16AM</p> <p>19 potentially the main reason why the market 09:31:21AM</p> <p>20 reacts to the dividend as opposed to the 09:31:24AM</p> <p>21 dividend change itself. 09:31:26AM</p> <p>22 Q. But the core information being 09:31:27AM</p> <p>23 communicated at least in a dividend change 09:31:29AM</p> <p>24 is the actual quantification of that 09:31:32AM</p> <p>25 change; is that accurate? 09:31:35AM</p> |
| <p style="text-align: right;">Page 27</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 dividend, it is usually the -- the core 09:29:38AM</p> <p>3 information is just the dollar per share 09:29:42AM</p> <p>4 or cents per share number; is that 09:29:43AM</p> <p>5 correct? 09:29:46AM</p> <p>6 A. That's the basic information 09:29:46AM</p> <p>7 about a dividend. There may be language 09:29:50AM</p> <p>8 about the reason for the dividend as well. 09:29:52AM</p> <p>9 And, again, a dividend change can be 09:29:57AM</p> <p>10 either an increase or a decrease. So 09:29:59AM</p> <p>11 often you would see additional language 09:30:02AM</p> <p>12 indicating the basis for the dividend 09:30:04AM</p> <p>13 change. 09:30:05AM</p> <p>14 Q. But the core information, say 09:30:05AM</p> <p>15 if IBM had a dollar per share dividend and 09:30:07AM</p> <p>16 was going to change it to \$1.50 per share 09:30:11AM</p> <p>17 dividend, that the main metric being 09:30:14AM</p> <p>18 communicated there is the quantification 09:30:17AM</p> <p>19 of the dividend change; is that accurate? 09:30:20AM</p> <p>20 MR. WANG: Objection to form. 09:30:23AM</p> <p>21 Vague and ambiguous. 09:30:25AM</p> <p>22 A. I think it would vary from case 09:30:25AM</p> <p>23 to case. Under basic finance theory there 09:30:27AM</p> <p>24 is a famous article that Merton Miller 09:30:30AM</p> <p>25 wrote many years ago on the irrelevance of 09:30:34AM</p>       | <p style="text-align: right;">Page 29</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection to form. 09:31:36AM</p> <p>3 Asked and answered. Vague and ambiguous 09:31:37AM</p> <p>4 still. 09:31:39AM</p> <p>5 A. And I'm not sure what you mean 09:31:39AM</p> <p>6 by the core information, because, again, 09:31:42AM</p> <p>7 there is a wide body of thought that the 09:31:44AM</p> <p>8 change in the dividend in and of itself 09:31:48AM</p> <p>9 doesn't create value, but it is the 09:31:52AM</p> <p>10 information that might be signaled by the 09:31:55AM</p> <p>11 dividend which one -- and, again, I'm not 09:31:56AM</p> <p>12 getting into a semantic debate -- but one 09:32:01AM</p> <p>13 could argue is that is the core 09:32:04AM</p> <p>14 information, what's the reason why the 09:32:06AM</p> <p>15 company is changing the dividend and what 09:32:07AM</p> <p>16 can that tell us about the future cash 09:32:09AM</p> <p>17 flows of the company. And that can be a 09:32:11AM</p> <p>18 fairly complicated thing for outsiders to 09:32:12AM</p> <p>19 infer. 09:32:15AM</p> <p>20 Q. So getting the dividend number 09:32:15AM</p> <p>21 certainly could trigger other analysis; is 09:32:19AM</p> <p>22 that what you are saying? 09:32:21AM</p> <p>23 MR. WANG: Objection to form. 09:32:22AM</p> <p>24 Q. That would be important to the 09:32:23AM</p> <p>25 company? 09:32:25AM</p>                                                                         |

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| Page 30                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 32                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Misstates his 09:32:25AM</p> <p>3 testimony. 09:32:26AM</p> <p>4 A. What I'm saying is one has to 09:32:26AM</p> <p>5 look beyond what simply the dividend 09:32:30AM</p> <p>6 change is, if the issue is how is this 09:32:33AM</p> <p>7 going to change the stock price of the 09:32:36AM</p> <p>8 company. And, for example, if a company 09:32:38AM</p> <p>9 was a very high-growth company, typically 09:32:43AM</p> <p>10 high-growth companies don't pay very large 09:32:47AM</p> <p>11 dividends because rather than pay cash out 09:32:50AM</p> <p>12 they would rather keep the cash in the 09:32:52AM</p> <p>13 firm and invest in their growth 09:32:54AM</p> <p>14 opportunities. 09:32:57AM</p> <p>15 So often when companies that 09:32:57AM</p> <p>16 were believed to be high-growth companies 09:32:59AM</p> <p>17 announced that they are suddenly going to 09:33:02AM</p> <p>18 start paying a dividend, their stock 09:33:04AM</p> <p>19 prices often will go down because the 09:33:07AM</p> <p>20 market will say we thought you had more 09:33:09AM</p> <p>21 good internal projects, and the fact that 09:33:11AM</p> <p>22 you are paying cash out is signaling that 09:33:14AM</p> <p>23 you may not have the growth opportunities 09:33:17AM</p> <p>24 that we thought you had. 09:33:19AM</p> <p>25 So, again, I think it is a 09:33:22AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the middle of the first full paragraph, it 09:34:22AM</p> <p>3 says "However, for the earnings 09:34:24AM</p> <p>4 announcements, we also find significantly 09:34:27AM</p> <p>5 elevated returns during the overnight 09:34:30AM</p> <p>6 period following the release and at the 09:34:32AM</p> <p>7 opening of trading the next day." 09:34:35AM</p> <p>8 Patell and Wolfson in their 09:34:39AM</p> <p>9 study found that earnings announcements 09:34:40AM</p> <p>10 often had a statistically significant 09:34:44AM</p> <p>11 impact on the company's stock being 09:34:45AM</p> <p>12 studied the following day after the 09:34:48AM</p> <p>13 announcement; is that correct? 09:34:50AM</p> <p>14 MR. WANG: Objection to form. 09:34:52AM</p> <p>15 A. I wouldn't quite put it that 09:34:52AM</p> <p>16 way. What they find is that there is an 09:34:55AM</p> <p>17 immediate reaction that in some cases does 09:34:57AM</p> <p>18 persist to the open of the following day. 09:35:02AM</p> <p>19 I don't believe they show evidence, nor do 09:35:08AM</p> <p>20 they state that there is no reaction on 09:35:10AM</p> <p>21 the day of the earnings announcement or 09:35:13AM</p> <p>22 the dividend announcement and then 09:35:15AM</p> <p>23 suddenly there is a delayed reaction the 09:35:16AM</p> <p>24 next morning. 09:35:18AM</p> <p>25 And I think Dr. Feinstein 09:35:19AM</p>  |
| Page 31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 33                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 misstatement to say that the core 09:33:23AM</p> <p>3 information is simply what happens to the 09:33:27AM</p> <p>4 dividend, what matters is the reason and 09:33:29AM</p> <p>5 the expectations that investors have about 09:33:32AM</p> <p>6 why the company is changing the dividend. 09:33:36AM</p> <p>7 Q. And the Patell and Wolfson 09:33:37AM</p> <p>8 article that we have marked as Exhibit 09:33:40AM</p> <p>9 503, what they are studying here, I think 09:33:42AM</p> <p>10 you have already testified to it, is 09:33:45AM</p> <p>11 earnings and dividend announcements; is 09:33:45AM</p> <p>12 that correct? 09:33:48AM</p> <p>13 A. That is correct. 09:33:48AM</p> <p>14 Q. They are not studying the 09:33:49AM</p> <p>15 release on the Internet of FDA reviewer 09:33:50AM</p> <p>16 reports from a clinical trial; is that 09:33:54AM</p> <p>17 correct? 09:33:56AM</p> <p>18 A. That's my recollection. That's 09:33:56AM</p> <p>19 correct. 09:34:03AM</p> <p>20 Q. So from a scientific 09:34:03AM</p> <p>21 perspective, this article -- well, strike 09:34:05AM</p> <p>22 that question. 09:34:12AM</p> <p>23 Could you turn to the second 09:34:12AM</p> <p>24 page of Exhibit 503, which is -- at the 09:34:14AM</p> <p>25 top is page 224 of the article. And in 09:34:18AM</p>                                                                       | <p>1 LEHN - CONFIDENTIAL</p> <p>2 actually mischaracterizes them when he 09:35:21AM</p> <p>3 claims they support his view. They talk 09:35:24AM</p> <p>4 about how it may persist, but persist 09:35:26AM</p> <p>5 implies that there was a reaction on the 09:35:28AM</p> <p>6 day that the information was released and 09:35:30AM</p> <p>7 that's the main upshot of their paper is 09:35:32AM</p> <p>8 that most of the price adjustment occurs 09:35:35AM</p> <p>9 immediately and in some cases it may spill 09:35:37AM</p> <p>10 over to the open the next day. 09:35:40AM</p> <p>11 Q. But they did articulate in this 09:35:41AM</p> <p>12 article that they observed statistically 09:35:45AM</p> <p>13 significant returns after earnings 09:35:47AM</p> <p>14 announcements oftentimes on the day 09:35:50AM</p> <p>15 following the earnings release; is that 09:35:54AM</p> <p>16 correct? 09:35:57AM</p> <p>17 MR. WANG: Objection to form. 09:35:57AM</p> <p>18 That misstates the document, I think. 09:35:58AM</p> <p>19 A. If you can direct me to the 09:36:01AM</p> <p>20 specific language. 09:36:02AM</p> <p>21 Q. Well, they state here that "For 09:36:03AM</p> <p>22 earnings announcements, we also find 09:36:07AM</p> <p>23 significantly elevated returns during the 09:36:09AM</p> <p>24 overnight period following the release and 09:36:11AM</p> <p>25 at the opening of trading on the next 09:36:15AM</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 day." 09:36:17AM</p> <p>3 That's what the article says, 09:36:18AM</p> <p>4 correct? 09:36:19AM</p> <p>5 A. That is what it says, correct. 09:36:19AM</p> <p>6 Q. And they seem to be 09:36:21AM</p> <p>7 articulating that in certain instances 09:36:22AM</p> <p>8 they observed elevated -- statistically 09:36:24AM</p> <p>9 significantly elevated returns on the day 09:36:27AM</p> <p>10 following an earnings announcement; is 09:36:29AM</p> <p>11 that correct? 09:36:31AM</p> <p>12 A. That is correct. But, again, 09:36:31AM</p> <p>13 in the context of a significant return on 09:36:32AM</p> <p>14 the day that the earnings information was 09:36:35AM</p> <p>15 released. And, again, in the context of 09:36:37AM</p> <p>16 their statement that most of the price 09:36:39AM</p> <p>17 effect of the earnings announcement occurs 09:36:41AM</p> <p>18 within minutes of the announcement. And I 09:36:45AM</p> <p>19 don't think one should separate those two 09:36:50AM</p> <p>20 facts. 09:36:52AM</p> <p>21 Q. And did you look at their data 09:36:53AM</p> <p>22 to see that in every instance there was a 09:36:55AM</p> <p>23 statistically significant decline on the 09:36:58AM</p> <p>24 day of the announcement when there was 09:37:01AM</p> <p>25 also a statistically significant decline 09:37:03AM</p> | <p style="text-align: right;">Page 36</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 unilateral opinion that a multi-day window 09:38:09AM</p> <p>3 is appropriate. But if the facts of the 09:38:12AM</p> <p>4 case dictate a multiple day window then it 09:38:14AM</p> <p>5 can be appropriate. 09:38:19AM</p> <p>6 Q. So you are not -- you would 09:38:20AM</p> <p>7 agree with me that it is perfectly 09:38:21AM</p> <p>8 appropriate to use a multi-day window in 09:38:23AM</p> <p>9 certain circumstances when analyzing loss 09:38:26AM</p> <p>10 causation and materiality? 09:38:28AM</p> <p>11 MR. WANG: Objection to form. 09:38:30AM</p> <p>12 A. Depending on the facts of a 09:38:30AM</p> <p>13 case. For example, Dr. Feinstein and I 09:38:32AM</p> <p>14 were involved in a previous matter 09:38:35AM</p> <p>15 involving a company called Apollo 09:38:37AM</p> <p>16 Securities, or Apollo Group, and my 09:38:39AM</p> <p>17 recollection is that there were allegedly 09:38:43AM</p> <p>18 corrective disclosures in that case on 09:38:46AM</p> <p>19 consecutive days, in which case to examine 09:38:48AM</p> <p>20 loss causation it would be appropriate to 09:38:54AM</p> <p>21 use a two-day window because allegedly 09:38:56AM</p> <p>22 there were two corrective disclosures back 09:39:00AM</p> <p>23 to back. 09:39:02AM</p> <p>24 In some cases hypothetically if 09:39:02AM</p> <p>25 you had a corrective disclosure that came 09:39:04AM</p> |
| <p style="text-align: right;">Page 35</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 the following day? 09:37:05AM</p> <p>3 MR. WANG: Objection to form. 09:37:06AM</p> <p>4 A. No, for two reasons. One is 09:37:08AM</p> <p>5 that this paper was published in 1984 and 09:37:11AM</p> <p>6 I'm not aware that their data is publicly 09:37:17AM</p> <p>7 available. But even if it were, it 09:37:21AM</p> <p>8 wouldn't matter because when one is 09:37:23AM</p> <p>9 testing scientifically, you are looking 09:37:25AM</p> <p>10 for central tendencies. 09:37:27AM</p> <p>11 And the central tendency here 09:37:30AM</p> <p>12 is that when information is released it is 09:37:31AM</p> <p>13 rapidly absorbed into the stock price of 09:37:33AM</p> <p>14 the companies that were issuing the 09:37:37AM</p> <p>15 earnings and dividend announcements. 09:37:38AM</p> <p>16 Q. Now, in your -- you've 09:37:40AM</p> <p>17 previously articulated that it is 09:37:49AM</p> <p>18 perfectly appropriate to use a multi-day 09:37:54AM</p> <p>19 window in certain contexts in the 09:37:57AM</p> <p>20 securities litigation realm? 09:38:00AM</p> <p>21 A. That is correct. 09:38:01AM</p> <p>22 Q. And how many times have you 09:38:02AM</p> <p>23 offered that type of opinion that a 09:38:03AM</p> <p>24 multi-day window is appropriate? 09:38:05AM</p> <p>25 A. I've never offered it as a 09:38:07AM</p>    | <p style="text-align: right;">Page 37</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 out at 3:15 p.m. on a given day, one might 09:39:06AM</p> <p>3 argue that, to be cautious, rather than 09:39:11AM</p> <p>4 just use the 45 minutes remaining in that 09:39:15AM</p> <p>5 trading day, let's look at the two-day 09:39:18AM</p> <p>6 return, so we would allow the market the 09:39:20AM</p> <p>7 benefit of a full trading day to absorb 09:39:24AM</p> <p>8 the information. So it may depend on the 09:39:26AM</p> <p>9 facts of the case. But none of that 09:39:28AM</p> <p>10 applies to this case. 09:39:31AM</p> <p>11 Q. And in certain circumstances 09:39:32AM</p> <p>12 the publication of analyst reports on the 09:39:34AM</p> <p>13 second day of an event you found to be 09:39:36AM</p> <p>14 important in utilizing -- or important to 09:39:39AM</p> <p>15 support your analysis of using a multi-day 09:39:43AM</p> <p>16 window; is that correct? 09:39:46AM</p> <p>17 MR. WANG: Objection to form. 09:39:47AM</p> <p>18 A. I don't recall as I sit here. 09:39:48AM</p> <p>19 Q. I want to direct your attention 09:39:50AM</p> <p>20 to what I'm marking as Plaintiffs' Exhibit 09:39:54AM</p> <p>21 504. 09:39:57AM</p> <p>22 (Plaintiffs' Exhibit 504 marked 09:39:59AM</p> <p>23 for identification.) 09:40:02AM</p> <p>24 Q. Could you please take a look at 09:40:38AM</p> <p>25 Plaintiffs' Exhibit 504, which is the 09:40:39AM</p>                    |

10 (Pages 34 to 37)

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| <p style="text-align: right;">Page 38</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 expert witness report of Kenneth M. Lehn 09:40:42AM</p> <p>3 designated by defendants Ernst &amp; Young LLP 09:40:45AM</p> <p>4 in the matter entitled Ohio Public 09:40:49AM</p> <p>5 Employees Retirement System v. Richard D. 09:40:53AM</p> <p>6 Parsons. 09:40:56AM</p> <p>7 I guess I will just ask you, do 09:40:57AM</p> <p>8 you recognize this as being a report that 09:40:59AM</p> <p>9 you offered in that case that I just 09:40:59AM</p> <p>10 referenced? 09:41:01AM</p> <p>11 A. It appears to be. It has been 09:41:01AM</p> <p>12 several years. But it does appear to be 09:41:03AM</p> <p>13 my report. 09:41:05AM</p> <p>14 Q. And if you look at the last 09:41:05AM</p> <p>15 page, or page 30 of Exhibit 504, is that 09:41:06AM</p> <p>16 your signature? 09:41:09AM</p> <p>17 A. It is, yes. 09:41:10AM</p> <p>18 Q. And you signed it on October 09:41:10AM</p> <p>19 20th, 2006; is that correct? 09:41:12AM</p> <p>20 A. That is correct. 09:41:13AM</p> <p>21 Q. And I would like to turn your 09:41:14AM</p> <p>22 attention to pages 19 and 20 of the 09:41:16AM</p> <p>23 report. 09:41:26AM</p> <p>24 And you are describing 09:41:27AM</p> <p>25 events -- or an event that began on July 09:41:29AM</p>             | <p style="text-align: right;">Page 40</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 context and the inference that was drawn 09:42:18AM</p> <p>3 from that. 09:42:20AM</p> <p>4 Q. And certainly in this case you 09:42:21AM</p> <p>5 are offering an opinion that a two-day 09:42:23AM</p> <p>6 window is the appropriate window to 09:42:28AM</p> <p>7 examine with respect to the AOL Time 09:42:30AM</p> <p>8 Warner disclosures on July 25th, 2002; is 09:42:33AM</p> <p>9 that correct? 09:42:36AM</p> <p>10 MR. WANG: Objection to form. 09:42:36AM</p> <p>11 A. I don't recall that I did that. 09:42:37AM</p> <p>12 If you can refer me to where I say that I 09:42:39AM</p> <p>13 would be happy to consider that. 09:42:43AM</p> <p>14 Q. I will certainly attempt to 09:42:44AM</p> <p>15 refresh your recollection here. If you 09:42:47AM</p> <p>16 look at paragraph 73 of the report -- and 09:42:48AM</p> <p>17 feel free to examine this whole section 09:42:50AM</p> <p>18 from paragraph 70 to 74, if that would be 09:42:52AM</p> <p>19 helpful, to take a moment or two to do 09:42:56AM</p> <p>20 that. 09:43:00AM</p> <p>21 (Witness perusing document.) 09:43:01AM</p> <p>22 A. Okay. 09:43:06AM</p> <p>23 Q. Is it accurate that you are 09:43:06AM</p> <p>24 offering an opinion that the appropriate 09:43:08AM</p> <p>25 window to look at in this case was a 09:43:09AM</p>                                                          |
| <p style="text-align: right;">Page 39</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 25th, 2002 regarding the disclosure -- 09:41:31AM</p> <p>3 disclosure related to AOL Time Warner; is 09:41:35AM</p> <p>4 that correct? 09:41:39AM</p> <p>5 A. That is correct. 09:41:39AM</p> <p>6 Q. And in paragraph 72, you write 09:41:40AM</p> <p>7 "However, the market continued to digest 09:41:42AM</p> <p>8 the earnings announcement and SEC 09:41:46AM</p> <p>9 investigation on July 26th. The Wall 09:41:48AM</p> <p>10 Street Journal published an article 09:41:51AM</p> <p>11 anticipating a possible rebound in AOL 09:41:52AM</p> <p>12 Time Warner shares." 09:41:55AM</p> <p>13 Do you see that? 09:41:56AM</p> <p>14 A. I do. 09:41:57AM</p> <p>15 Q. And that is part of the opinion 09:41:57AM</p> <p>16 you formed in the AOL Time Warner case? 09:42:00AM</p> <p>17 MR. WANG: Well, you haven't 09:42:03AM</p> <p>18 given him a chance to look at his opinion 09:42:04AM</p> <p>19 yet. 09:42:06AM</p> <p>20 A. Can you repeat the question? 09:42:08AM</p> <p>21 Q. You wrote that as part of your 09:42:09AM</p> <p>22 report in the AOL Time Warner case; is 09:42:11AM</p> <p>23 that correct? 09:42:15AM</p> <p>24 A. The words are there, that's 09:42:15AM</p> <p>25 correct. Again, I don't recall the 09:42:16AM</p> | <p style="text-align: right;">Page 41</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 two-day window; is that correct? 09:43:11AM</p> <p>3 A. Well, I don't -- again, I'm 09:43:13AM</p> <p>4 looking at just this one section which is 09:43:15AM</p> <p>5 referring to information that came out 09:43:18AM</p> <p>6 around July 25th, so information disclosed 09:43:22AM</p> <p>7 after the market closed on July 24th. And 09:43:25AM</p> <p>8 then a Wall Street Journal article that 09:43:29AM</p> <p>9 occurred on July 26th. 09:43:34AM</p> <p>10 And then I report in paragraph 09:43:36AM</p> <p>11 73 the cumulative residual over the two 09:43:39AM</p> <p>12 days and document that it is not 09:43:42AM</p> <p>13 significant. 09:43:44AM</p> <p>14 And the only thing I see in 09:43:46AM</p> <p>15 paragraph 74 is what is an accurate 09:43:48AM</p> <p>16 statement given what was reported, which 09:43:50AM</p> <p>17 is the alleged misrepresentations by E&amp;Y 09:43:53AM</p> <p>18 did not result in a statistically 09:43:57AM</p> <p>19 significant decline in AOL Time Warner 09:43:59AM</p> <p>20 stock price during this window. 09:44:02AM</p> <p>21 Q. So you examined a window that 09:44:03AM</p> <p>22 lasted from the close of trading on July 09:44:05AM</p> <p>23 24th through the close of trading on July 09:44:09AM</p> <p>24 26th; is that correct? 09:44:11AM</p> <p>25 A. That is correct. But, again, 09:44:13AM</p> |

11 (Pages 38 to 41)



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| <p style="text-align: right;">Page 42</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 this describes two pieces of information, 09:44:15AM</p> <p>3 if you will, that were disclosed, one in 09:44:19AM</p> <p>4 paragraph 71. "After market close on July 09:44:23AM</p> <p>5 24th, AOL Time Warner announced second 09:44:26AM</p> <p>6 quarter results and said the SEC was 09:44:30AM</p> <p>7 conducting a 'fact-finding mission' into 09:44:32AM</p> <p>8 alleged accounting improprieties." 09:44:36AM</p> <p>9 Then the next paragraph 09:44:41AM</p> <p>10 describes additional related information, 09:44:42AM</p> <p>11 but different information, namely the Wall 09:44:44AM</p> <p>12 Street Journal publishing an article and 09:44:48AM</p> <p>13 quotes from a commentator. 09:44:49AM</p> <p>14 And, again, I don't recall the 09:44:50AM</p> <p>15 exact context in which I conducted this 09:44:52AM</p> <p>16 analysis. But what is described there is 09:44:56AM</p> <p>17 accurate that over that two-day window 09:44:58AM</p> <p>18 there was not a statistically significant 09:45:01AM</p> <p>19 decline in AOL Time Warner stock price. 09:45:04AM</p> <p>20 Q. But when you look at paragraph 09:45:06AM</p> <p>21 70, the decline on July 25th of over 10 09:45:08AM</p> <p>22 percent, that was statistically 09:45:11AM</p> <p>23 significant, correct? 09:45:13AM</p> <p>24 A. That is correct. 09:45:13AM</p> <p>25 Q. So in this case if you would 09:45:14AM</p> | <p style="text-align: right;">Page 44</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 measure the impact of this information 09:46:12AM</p> <p>3 over the course of both July 25 and July 09:46:14AM</p> <p>4 26, 2002." 09:46:18AM</p> <p>5 You wrote that in paragraph 73 09:46:20AM</p> <p>6 of your report which I've marked as 09:46:21AM</p> <p>7 Plaintiffs' Exhibit 504; is that correct? 09:46:24AM</p> <p>8 MR. WANG: Objection to form. 09:46:27AM</p> <p>9 A. That's correct. 09:46:28AM</p> <p>10 Q. And the next sentence, you 09:46:28AM</p> <p>11 write "The cumulative residual return over 09:46:30AM</p> <p>12 these two days was negative" -- I'm sorry, 09:46:33AM</p> <p>13 I'll say that again. 09:46:38AM</p> <p>14 You write in the next sentence 09:46:39AM</p> <p>15 "The cumulative residual return over these 09:46:42AM</p> <p>16 two days was negative 0.68 percent and is 09:46:45AM</p> <p>17 not significant." 09:46:48AM</p> <p>18 You wrote that as part of your 09:46:48AM</p> <p>19 report which I have marked as Exhibit 504, 09:46:50AM</p> <p>20 correct? 09:46:52AM</p> <p>21 A. That is correct. 09:46:53AM</p> <p>22 Q. I want to show you what I'm 09:46:59AM</p> <p>23 marking as Plaintiffs' Exhibit 505. 09:47:01AM</p> <p>24 (Plaintiffs' Exhibit 505 marked 09:47:03AM</p> <p>25 for identification.) 09:47:05AM</p> |
| <p style="text-align: right;">Page 43</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 have looked at a one-day window the 09:45:15AM</p> <p>3 conclusion you would have come to was the 09:45:18AM</p> <p>4 decline was statistically significant; is 09:45:19AM</p> <p>5 that correct? 09:45:24AM</p> <p>6 A. Again, it has been a while 09:45:24AM</p> <p>7 since I've thought about the AOL Time 09:45:26AM</p> <p>8 Warner case. But reading what I have 09:45:29AM</p> <p>9 here, the conclusion in paragraph 74 would 09:45:33AM</p> <p>10 be the same, that, you know, over a 09:45:35AM</p> <p>11 two-day window, for whatever purpose it 09:45:38AM</p> <p>12 was being used, there was no statistically 09:45:40AM</p> <p>13 significant decline. 09:45:42AM</p> <p>14 Q. But over one day the decline 09:45:44AM</p> <p>15 was statistically significant, correct? 09:45:46AM</p> <p>16 A. On the day of July 25th, that's 09:45:48AM</p> <p>17 correct. 09:45:51AM</p> <p>18 Q. And looking at paragraph 73 of 09:45:51AM</p> <p>19 your report, in justifying the use of the 09:45:53AM</p> <p>20 two-day window or the multi-day window, 09:45:57AM</p> <p>21 you write "As the analyst reports and 09:45:59AM</p> <p>22 public press indicate, the market was 09:46:03AM</p> <p>23 continuing to evaluate the impact of the 09:46:05AM</p> <p>24 earnings announcement and the SEC 09:46:08AM</p> <p>25 investigation. It is appropriate to 09:46:10AM</p>                           | <p style="text-align: right;">Page 45</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Do you recognize Exhibit 505 as 09:47:25AM</p> <p>3 being the transcript of deposition 09:47:33AM</p> <p>4 testimony you provided in the AOL Time 09:47:35AM</p> <p>5 Warner litigation on March 30th, 2007? 09:47:38AM</p> <p>6 A. I don't recall it as such, but 09:47:41AM</p> <p>7 it does appear to be that. 09:47:43AM</p> <p>8 Q. And you were designated as an 09:47:45AM</p> <p>9 expert in that litigation by the 09:47:46AM</p> <p>10 defendants; is that correct? 09:47:48AM</p> <p>11 A. That is correct. 09:47:49AM</p> <p>12 Q. And you recall testifying? 09:47:49AM</p> <p>13 A. I recall having a deposition, 09:47:52AM</p> <p>14 that's correct. 09:47:53AM</p> <p>15 Q. And that testimony was under 09:47:53AM</p> <p>16 oath? 09:47:55AM</p> <p>17 A. That's correct. 09:47:55AM</p> <p>18 Q. And it was before a court 09:47:55AM</p> <p>19 reporter such as we have today? 09:47:57AM</p> <p>20 A. That is correct. 09:47:58AM</p> <p>21 Q. And you swore to testify 09:47:59AM</p> <p>22 truthfully in that case? 09:48:01AM</p> <p>23 A. That is correct. 09:48:02AM</p> <p>24 Q. Could you please turn to page 09:48:03AM</p> <p>25 124 and 125 of your deposition. That 09:48:07AM</p>                                                           |

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| Page 46                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 48                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 would be the 32nd page of the Minuscript. 09:48:09AM</p> <p>3 Are you with me? 09:48:13AM</p> <p>4 A. I am. 09:48:14AM</p> <p>5 Q. And you were asked at the 09:48:15AM</p> <p>6 bottom of page 124, specifically at line 09:48:17AM</p> <p>7 23, you were asked by the lawyer examining 09:48:21AM</p> <p>8 you "But the event in fact can be an event 09:48:23AM</p> <p>9 window, it could be more than one day in 09:48:30AM</p> <p>10 which you analyze the effect of any 09:48:33AM</p> <p>11 information on a particular stock price, 09:48:35AM</p> <p>12 correct?" 09:48:37AM</p> <p>13 And you responded "If the 09:48:38AM</p> <p>14 information is released on a given day and 09:48:39AM</p> <p>15 there is so-called follow-on information 09:48:43AM</p> <p>16 the next day, then it is perfectly 09:48:45AM</p> <p>17 appropriate to use a multi-day window as 09:48:47AM</p> <p>18 you say." 09:48:50AM</p> <p>19 You provided that testimony on 09:48:50AM</p> <p>20 March 30th, 2007; is that correct? 09:48:54AM</p> <p>21 A. That is correct. 09:48:56AM</p> <p>22 Q. And you testified truthfully 09:48:57AM</p> <p>23 and accurate that day? 09:48:59AM</p> <p>24 A. That is correct. 09:49:00AM</p> <p>25 Q. And you were subsequently asked 09:49:00AM</p>                                                | <p>1 LEHN - CONFIDENTIAL</p> <p>2 have marked as Exhibit 503, could you turn 09:49:48AM</p> <p>3 your attention to page 250 of the article 09:49:57AM</p> <p>4 and specifically the first full paragraph, 09:50:10AM</p> <p>5 the third sentence, where Patell and 09:50:12AM</p> <p>6 Wolfson write "It is possible that the 09:50:14AM</p> <p>7 adjustment intervals would be 09:50:18AM</p> <p>8 significantly longer for smaller firms or 09:50:20AM</p> <p>9 for other less regular announcements made 09:50:24AM</p> <p>10 by our sample firms." 09:50:26AM</p> <p>11 Do you see that? 09:50:28AM</p> <p>12 A. I do. 09:50:29AM</p> <p>13 Q. And do you have an 09:50:29AM</p> <p>14 understanding of what Patell and Wolfson 09:50:30AM</p> <p>15 mean by "less regular announcements"? 09:50:32AM</p> <p>16 A. I suppose what they are 09:50:36AM</p> <p>17 referring to are less regular than 09:50:40AM</p> <p>18 dividend and earnings announcements. 09:50:42AM</p> <p>19 Q. Now, an earnings announcement 09:50:44AM</p> <p>20 is a quarterly event for publicly traded 09:50:46AM</p> <p>21 companies; is that correct? 09:50:48AM</p> <p>22 A. That is correct. 09:50:49AM</p> <p>23 Q. So not to oversimplify, but it 09:50:49AM</p> <p>24 occurs four times a year, every year? 09:50:53AM</p> <p>25 A. That is correct. 09:50:56AM</p> |
| Page 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 49                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 "That multi-day window can also be 09:49:04AM</p> <p>3 referred to as an event window, correct?" 09:49:06AM</p> <p>4 And you responded "Correct." Is that 09:49:08AM</p> <p>5 accurate? 09:49:10AM</p> <p>6 A. That is correct. 09:49:11AM</p> <p>7 Q. And this accurately reflects 09:49:11AM</p> <p>8 your testimony from the AOL litigation; is 09:49:12AM</p> <p>9 that correct, sir? 09:49:15AM</p> <p>10 A. That is correct. But, again, 09:49:15AM</p> <p>11 the word "follow-on information" has 09:49:17AM</p> <p>12 particular meaning, meaning that it is 09:49:20AM</p> <p>13 more information, new information, that 09:49:23AM</p> <p>14 follows the information that had been 09:49:26AM</p> <p>15 released the previous day. 09:49:27AM</p> <p>16 Q. And that follow-on information 09:49:28AM</p> <p>17 can take the form of an analyst report; is 09:49:30AM</p> <p>18 that correct? 09:49:33AM</p> <p>19 A. Depending on what is in the 09:49:33AM</p> <p>20 analyst report, that is correct. If there 09:49:35AM</p> <p>21 is new information in the analyst report, 09:49:37AM</p> <p>22 that could be potentially considered 09:49:38AM</p> <p>23 follow-on information. 09:49:40AM</p> <p>24 Q. Turning your attention back to 09:49:42AM</p> <p>25 the Patell and Wolfson article which we 09:49:46AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. You are familiar with 09:50:57AM</p> <p>3 securities analysts who follow public 09:50:59AM</p> <p>4 companies; is that correct? 09:51:00AM</p> <p>5 A. That is correct. 09:51:01AM</p> <p>6 Q. And you are basically, although 09:51:01AM</p> <p>7 you are not practicing as one, you would 09:51:03AM</p> <p>8 be qualified to perform that job function; 09:51:05AM</p> <p>9 is that correct? 09:51:07AM</p> <p>10 A. You know, I let my 09:51:09AM</p> <p>11 qualifications speak for myself. 09:51:11AM</p> <p>12 Q. You are a certified financial 09:51:13AM</p> <p>13 analyst? 09:51:15AM</p> <p>14 A. I am not. 09:51:15AM</p> <p>15 Q. But what do securities analysts 09:51:15AM</p> <p>16 do, just generally? 09:51:19AM</p> <p>17 A. Well, they do a variety of 09:51:21AM</p> <p>18 things. They issue reports probably being 09:51:24AM</p> <p>19 the most important. And the reports 09:51:26AM</p> <p>20 provide commentary as well as projections 09:51:27AM</p> <p>21 and estimates of target prices, investment 09:51:30AM</p> <p>22 recommendations, and so forth. 09:51:33AM</p> <p>23 And then they work often with 09:51:36AM</p> <p>24 the institutional and retail salespeople 09:51:39AM</p> <p>25 in their firms and provide them with 09:51:41AM</p>                                     |

13 (Pages 46 to 49)



## CONFIDENTIAL

| Page 50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 advice internally. And then obviously 09:51:45AM</p> <p>3 also provide marketing for the firm by 09:51:47AM</p> <p>4 going out and speaking at conferences and 09:51:51AM</p> <p>5 so forth. 09:51:53AM</p> <p>6 Q. And is one thing they do, they 09:51:53AM</p> <p>7 often issue earnings estimates going 09:51:56AM</p> <p>8 forward for companies they are following? 09:51:59AM</p> <p>9 A. They do. 09:52:00AM</p> <p>10 Q. And is it fair to say that one 09:52:01AM</p> <p>11 sort of regularly followed event for 09:52:03AM</p> <p>12 securities analysts are the quarterly 09:52:07AM</p> <p>13 earnings announcements of the companies 09:52:09AM</p> <p>14 they are following? 09:52:10AM</p> <p>15 A. That would be one, that's 09:52:11AM</p> <p>16 correct. 09:52:12AM</p> <p>17 Q. And they are specifically 09:52:12AM</p> <p>18 trained and become very familiar with that 09:52:15AM</p> <p>19 type of announcement; is that fair to say? 09:52:19AM</p> <p>20 MR. WANG: Objection to form. 09:52:22AM</p> <p>21 A. When you say "very familiar 09:52:23AM</p> <p>22 with that kind of announcement," earnings 09:52:26AM</p> <p>23 announcements can vary a lot from quarter 09:52:28AM</p> <p>24 to quarter within a firm or across firms. 09:52:31AM</p> <p>25 So certainly they are familiar with 09:52:34AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 contained in a new drug application and 09:53:39AM</p> <p>3 understanding the way in which the FDA 09:53:43AM</p> <p>4 releases materials and when they schedule 09:53:47AM</p> <p>5 meetings is something that I would view 09:53:49AM</p> <p>6 most pharmaceutical analysts to believe is 09:53:52AM</p> <p>7 a fairly regular event. 09:53:54AM</p> <p>8 Q. In your opinion, is the 09:53:56AM</p> <p>9 announcement of a clinical trial less 09:53:58AM</p> <p>10 regular than a company's quarterly 09:54:02AM</p> <p>11 earnings announcement? 09:54:04AM</p> <p>12 MR. WANG: Objection to form. 09:54:05AM</p> <p>13 A. Again, as a general matter, I 09:54:07AM</p> <p>14 would. But I think one has to place that 09:54:17AM</p> <p>15 in context, that in the pharmaceutical 09:54:20AM</p> <p>16 industry, you know, the results of 09:54:21AM</p> <p>17 clinical trials are things that analysts 09:54:25AM</p> <p>18 would, I believe, are trained to 09:54:30AM</p> <p>19 understand and analyze the way analysts 09:54:34AM</p> <p>20 would also analyze earnings announcements 09:54:37AM</p> <p>21 of companies. 09:54:39AM</p> <p>22 Q. But as a general matter you 09:54:40AM</p> <p>23 would agree with me that the release of 09:54:42AM</p> <p>24 data from a clinical trial is less regular 09:54:43AM</p> <p>25 than a company's quarterly earnings 09:54:46AM</p> |
| Page 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 53                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 receiving earnings information, but the 09:52:36AM</p> <p>3 earnings that a given company issues in a 09:52:40AM</p> <p>4 quarter can have nuances and complications 09:52:42AM</p> <p>5 that may be new to the analyst. 09:52:46AM</p> <p>6 Q. But certainly utilizing 09:52:47AM</p> <p>7 earnings information is one of the things 09:52:50AM</p> <p>8 that analysts typically do as part of 09:52:52AM</p> <p>9 their job; is that fair to say? 09:52:55AM</p> <p>10 A. That I think would be fair to 09:52:56AM</p> <p>11 say. 09:52:58AM</p> <p>12 Q. And is it also accurate that 09:52:58AM</p> <p>13 the revelation or the disclosure of 09:53:02AM</p> <p>14 results from a clinical trial, a one-time 09:53:05AM</p> <p>15 clinical trial, is by definition less 09:53:08AM</p> <p>16 regular than a quarterly earnings 09:53:10AM</p> <p>17 announcement? 09:53:13AM</p> <p>18 A. Well, mathematically, if you 09:53:19AM</p> <p>19 are saying one trial, by definition one is 09:53:21AM</p> <p>20 less than the four quarterly earnings 09:53:24AM</p> <p>21 numbers. So the number would be 09:53:26AM</p> <p>22 numerically less. 09:53:28AM</p> <p>23 But, again, if you are a 09:53:30AM</p> <p>24 pharmaceutical analyst, you know, 09:53:31AM</p> <p>25 understanding information that is 09:53:35AM</p>             | <p>1 LEHN - CONFIDENTIAL</p> <p>2 announcement? 09:54:48AM</p> <p>3 MR. WANG: Objection to form. 09:54:49AM</p> <p>4 A. Again, by "regular," you mean 09:54:50AM</p> <p>5 less frequent? 09:54:59AM</p> <p>6 Q. Well, my question, you know, 09:55:01AM</p> <p>7 you relied on this article, and 09:55:03AM</p> <p>8 Dr. Feinstein relied on it as well, the 09:55:06AM</p> <p>9 Patell and Wolfson article, and they 09:55:08AM</p> <p>10 specifically used this term "less regular 09:55:10AM</p> <p>11 announcement." 09:55:12AM</p> <p>12 Do you have an understanding as 09:55:13AM</p> <p>13 to how Patell and Wolfson were using it at 09:55:14AM</p> <p>14 page 250, the second paragraph of their 09:55:17AM</p> <p>15 seminal 1984 article? 09:55:20AM</p> <p>16 A. The understanding I would have 09:55:23AM</p> <p>17 is that they are less frequent. 09:55:25AM</p> <p>18 Q. So given your understanding 09:55:29AM</p> <p>19 that it is less frequent, you would agree 09:55:32AM</p> <p>20 with me that the release of information 09:55:34AM</p> <p>21 regarding a clinical trial is less regular 09:55:37AM</p> <p>22 than a company's earnings announcement; is 09:55:40AM</p> <p>23 that correct, sir? 09:55:43AM</p> <p>24 A. My hesitancy is that I don't 09:55:45AM</p> <p>25 know the frequency with which 09:55:50AM</p>                                                                             |

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| Page 54                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 56                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 pharmaceutical companies would release 09:55:52AM</p> <p>3 results of clinical trials over the course 09:55:54AM</p> <p>4 of a year, and I can't rule out the 09:55:56AM</p> <p>5 possibility that some pharmaceutical 09:55:59AM</p> <p>6 companies might release the results of 09:56:00AM</p> <p>7 clinical trials more than four times a 09:56:03AM</p> <p>8 year. 09:56:05AM</p> <p>9 Q. Let's make it more specific, 09:56:05AM</p> <p>10 just so we are not -- we make sure we are 09:56:07AM</p> <p>11 understanding each other, and I will use 09:56:11AM</p> <p>12 the specific exactly that is germane to 09:56:12AM</p> <p>13 this case, the release of the results -- 09:56:15AM</p> <p>14 or the initial release of the results of 09:56:18AM</p> <p>15 the CLASS trial relating to Celebrex, and 09:56:21AM</p> <p>16 you recall that occurred in April of 2000? 09:56:24AM</p> <p>17 A. That's correct. 09:56:27AM</p> <p>18 Q. The release of the CLASS data, 09:56:27AM</p> <p>19 the initial release of the CLASS data, 09:56:30AM</p> <p>20 would you agree with me that that was less 09:56:32AM</p> <p>21 regular than a company's quarterly 09:56:34AM</p> <p>22 earnings announcement as that term is 09:56:36AM</p> <p>23 utilized at page 250 of the Patell and 09:56:39AM</p> <p>24 Wolfson report? 09:56:42AM</p> <p>25 MR. WANG: 250 refers to 09:56:43AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the results of the CLASS study by 09:57:31AM</p> <p>3 definition I think that's correct, that 09:57:32AM</p> <p>4 there are more earnings announcements than 09:57:35AM</p> <p>5 there was release of the CLASS data. But 09:57:37AM</p> <p>6 I don't frankly think that is relevant for 09:57:44AM</p> <p>7 the speed with which the market would 09:57:47AM</p> <p>8 reflect that information. 09:57:47AM</p> <p>9 Q. I'm sorry if I misspoke, and I 09:57:48AM</p> <p>10 will ask the question again. 09:57:50AM</p> <p>11 If you look at the sentence we 09:57:52AM</p> <p>12 were just discussing in the Patell and 09:57:53AM</p> <p>13 Wolfson in the middle of the second 09:57:55AM</p> <p>14 paragraph of page 250, and I'm just 09:57:57AM</p> <p>15 quoting the three words towards the end of 09:58:02AM</p> <p>16 that sentence where it says "less regular 09:58:05AM</p> <p>17 announcements," plural. I might have said 09:58:07AM</p> <p>18 "announcement," not "announcements." 09:58:10AM</p> <p>19 And my question is, would you 09:58:12AM</p> <p>20 agree with me that the release of the 09:58:13AM</p> <p>21 CLASS data or the press release describing 09:58:15AM</p> <p>22 the CLASS data that was issued in April of 09:58:18AM</p> <p>23 2000, that that announcement was less 09:58:23AM</p> <p>24 regular than a company's earnings 09:58:27AM</p> <p>25 announcements as described by Patell and 09:58:31AM</p> |
| Page 55                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 57                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 earnings and dividends announcements. You 09:56:45AM</p> <p>3 have already established that's what the 09:56:47AM</p> <p>4 article discusses. So that 09:56:48AM</p> <p>5 mischaracterizes the document. Objection 09:56:50AM</p> <p>6 to form. 09:56:53AM</p> <p>7 Q. Do you understand the question 09:56:53AM</p> <p>8 or do you want me to ask it again? 09:56:54AM</p> <p>9 A. Can you repeat that? 09:56:56AM</p> <p>10 Q. Is it correct that the release 09:56:57AM</p> <p>11 of the CLASS data in April of 2000 was 09:56:58AM</p> <p>12 less regular than an earnings announcement 09:57:02AM</p> <p>13 as that term is utilized by Patell and 09:57:06AM</p> <p>14 Wolfson? 09:57:09AM</p> <p>15 MR. WANG: Objection to form. 09:57:10AM</p> <p>16 A. Well, the way you phrase your 09:57:11AM</p> <p>17 question, I think the answer is no. If 09:57:12AM</p> <p>18 you say it is less frequent than an 09:57:14AM</p> <p>19 earnings announcement, if you are only 09:57:17AM</p> <p>20 talking about one earnings announcement 09:57:20AM</p> <p>21 and one release of the CLASS data, then 09:57:21AM</p> <p>22 one is equal to one. 09:57:23AM</p> <p>23 Now, if you are talking more 09:57:24AM</p> <p>24 generally that companies issue earnings 09:57:26AM</p> <p>25 more frequently than Pharmacia released 09:57:27AM</p>                                              | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Wolfson in their article? 09:58:34AM</p> <p>3 MR. WANG: Objection to form. 09:58:35AM</p> <p>4 A. Well, again, given that that 09:58:36AM</p> <p>5 only occurred once, then that obviously is 09:58:41AM</p> <p>6 a lower -- smaller number than the number 09:58:45AM</p> <p>7 of earnings announcements that Pharmacia 09:58:48AM</p> <p>8 had. 09:58:51AM</p> <p>9 Q. And would you similarly agree 09:58:51AM</p> <p>10 with me that the posting on the website by 09:58:53AM</p> <p>11 the FDA of the full or entire study data 09:58:55AM</p> <p>12 or results of the entire CLASS study that 09:59:01AM</p> <p>13 occurred on February 6th, 2001, that that 09:59:03AM</p> <p>14 was also by definition less regular than 09:59:06AM</p> <p>15 the company's quarterly earnings 09:59:11AM</p> <p>16 announcements? 09:59:13AM</p> <p>17 MR. WANG: Objection to form. 09:59:15AM</p> <p>18 A. Again, by definition, if that 09:59:16AM</p> <p>19 only occurred one time, then that would be 09:59:22AM</p> <p>20 less regular than a quarterly earnings 09:59:24AM</p> <p>21 announcement. But, again, I don't see the 09:59:26AM</p> <p>22 relevance of that for this particular 09:59:28AM</p> <p>23 matter. 09:59:30AM</p> <p>24 Q. And I want to show you now what 09:59:30AM</p> <p>25 I'm marking as Plaintiffs' Exhibit 506. 09:59:33AM</p>                                                                                       |

15 (Pages 54 to 57)

CONFIDENTIAL

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| <p style="text-align: right;">Page 58</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 (Plaintiffs' Exhibit 506 marked 09:59:35AM</p> <p>3 for identification.) 09:59:37AM</p> <p>4 Q. I should say, Dr. Lehn, I know 09:59:41AM</p> <p>5 we really didn't discuss, I know you have 09:59:44AM</p> <p>6 been deposed multiple times; is that 09:59:45AM</p> <p>7 correct? 09:59:47AM</p> <p>8 A. That is correct. 09:59:47AM</p> <p>9 Q. And if at any time you want to 09:59:48AM</p> <p>10 take a break or whatever just please let 09:59:50AM</p> <p>11 me know. 09:59:52AM</p> <p>12 A. I will. 09:59:52AM</p> <p>13 Q. Could you please take a look at 10:00:08AM</p> <p>14 what I have marked as Plaintiffs' Exhibit 10:00:20AM</p> <p>15 506, which, just for the record, is an 10:00:21AM</p> <p>16 affidavit of Howard R. Philips of the 10:00:23AM</p> <p>17 United States Food and Drug Administration 10:00:28AM</p> <p>18 and it attaches four exhibits, the first 10:00:30AM</p> <p>19 three of which are the FDA reviewer 10:00:33AM</p> <p>20 reports that were posted on the Internet 10:00:37AM</p> <p>21 in February of 2001. 10:00:38AM</p> <p>22 But please take a look through 10:00:41AM</p> <p>23 and I would ask you if you have seen this 10:00:44AM</p> <p>24 document before. 10:00:46AM</p> <p>25 (Witness perusing document.) 10:00:47AM</p>                                                                            | <p style="text-align: right;">Page 60</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 that correct? 10:02:13AM</p> <p>3 A. That's my understanding, that's 10:02:13AM</p> <p>4 correct. 10:02:14AM</p> <p>5 Q. And in order to do that you 10:02:14AM</p> <p>6 would need to know exactly what time the 10:02:16AM</p> <p>7 conference call was going to occur? 10:02:18AM</p> <p>8 A. That's correct. 10:02:19AM</p> <p>9 Q. And that's something that 10:02:20AM</p> <p>10 didn't happen with respect to the release 10:02:21AM</p> <p>11 or the posting of these three reports that 10:02:24AM</p> <p>12 are part of Exhibit 506, there was no 10:02:31AM</p> <p>13 press release issued indicating exactly 10:02:33AM</p> <p>14 when those would be posted on the 10:02:35AM</p> <p>15 Internet; is that correct? 10:02:37AM</p> <p>16 MR. WANG: Objection to form. 10:02:38AM</p> <p>17 A. I don't know about that. I do 10:02:39AM</p> <p>18 know that the Federal Register in December 10:02:41AM</p> <p>19 27, 2000 issued the date at which there 10:02:45AM</p> <p>20 would be the meeting and at which the FDA 10:02:50AM</p> <p>21 Advisory Panel would take up the potential 10:02:53AM</p> <p>22 label change for both Celebrex and Vioxx. 10:02:56AM</p> <p>23 So the meeting date was known. 10:03:01AM</p> <p>24 And it is my understanding that 10:03:04AM</p> <p>25 it is general practice of the FDA to 10:03:05AM</p> |
| <p style="text-align: right;">Page 59</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. And I have, yes. 10:01:20AM</p> <p>3 Q. And before we get into that 10:01:21AM</p> <p>4 document, you can leave it there, is it 10:01:24AM</p> <p>5 accurate that before an earnings 10:01:28AM</p> <p>6 announcement there is usually a press 10:01:30AM</p> <p>7 release that's issued saying exactly when 10:01:33AM</p> <p>8 the earnings are going to be released? 10:01:39AM</p> <p>9 MR. WANG: Objection to form. 10:01:42AM</p> <p>10 A. Again, I'm not sure what the 10:01:44AM</p> <p>11 form is, whether it is a press release or 10:01:46AM</p> <p>12 some other means. But it is generally 10:01:48AM</p> <p>13 known to the market when a company will 10:01:50AM</p> <p>14 announce their quarterly earnings. 10:01:52AM</p> <p>15 Q. And is that usually done in 10:01:54AM</p> <p>16 what is called a conference call? 10:01:55AM</p> <p>17 MR. WANG: Objection to form. 10:01:57AM</p> <p>18 A. There typically would be a 10:01:59AM</p> <p>19 conference call associated with an 10:02:01AM</p> <p>20 earnings announcement. 10:02:02AM</p> <p>21 Q. And there is generally a press 10:02:03AM</p> <p>22 release issued in advance of that 10:02:05AM</p> <p>23 conference call providing analysts with 10:02:07AM</p> <p>24 dial-in information so they can 10:02:09AM</p> <p>25 participate in the conference call; is 10:02:11AM</p> | <p style="text-align: right;">Page 61</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 release the briefing materials one day 10:03:08AM</p> <p>3 prior to the actual meeting. So whether 10:03:09AM</p> <p>4 or not there was a press release, it would 10:03:12AM</p> <p>5 certainly be my understanding that 10:03:15AM</p> <p>6 analysts were anticipating the briefing 10:03:16AM</p> <p>7 materials on February 6th. 10:03:18AM</p> <p>8 Q. And what's the basis of your 10:03:19AM</p> <p>9 opinion that the materials would be posted 10:03:21AM</p> <p>10 on the website one day prior to the 10:03:24AM</p> <p>11 meeting? 10:03:28AM</p> <p>12 A. I don't recall whether it was 10:03:30AM</p> <p>13 Dr. Fiorino's report, but I do recall 10:03:32AM</p> <p>14 seeing some reference to the fact that 10:03:39AM</p> <p>15 typically the FDA would post the briefing 10:03:40AM</p> <p>16 materials the day prior to the meeting, 10:03:42AM</p> <p>17 the relevant meeting. 10:03:44AM</p> <p>18 Q. Do you know if it could have 10:03:45AM</p> <p>19 been posted two days before? 10:03:46AM</p> <p>20 A. I don't. 10:03:47AM</p> <p>21 Q. And do you have any basis for 10:03:48AM</p> <p>22 your opinion other than relying on 10:03:49AM</p> <p>23 Dr. Fiorino as to when the briefing 10:03:51AM</p> <p>24 materials would be posted on the Internet? 10:03:55AM</p> <p>25 A. No. 10:03:58AM</p>                          |

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| <p style="text-align: right;">Page 62</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. So if Dr. Fiorino, say, was 10:03:59AM</p> <p>3 wrong about that, you wouldn't have any 10:04:02AM</p> <p>4 basis to opine as to when these materials, 10:04:04AM</p> <p>5 which are part of the Philips affidavit, 10:04:08AM</p> <p>6 Plaintiffs' Exhibit 506, would be posted 10:04:11AM</p> <p>7 on the Internet? 10:04:13AM</p> <p>8 MR. WANG: Objection to form. 10:04:15AM</p> <p>9 A. Again, I thought you were 10:04:16AM</p> <p>10 asking prospectively prior to that date 10:04:18AM</p> <p>11 would analysts know when precisely the 10:04:20AM</p> <p>12 information would be posted. 10:04:22AM</p> <p>13 We do know that on the morning 10:04:24AM</p> <p>14 of February 6th, Bloomberg had an article 10:04:26AM</p> <p>15 at roughly 10 o'clock in the morning with 10:04:30AM</p> <p>16 a link to the FDA website, which is still 10:04:32AM</p> <p>17 a live link, that contained these 10:04:35AM</p> <p>18 materials. 10:04:36AM</p> <p>19 Q. I understand that. And, again, 10:04:36AM</p> <p>20 that's my fault and I thank you for 10:04:39AM</p> <p>21 correcting me. 10:04:41AM</p> <p>22 Obviously I am talking about 10:04:42AM</p> <p>23 prospectively without the benefit of 10:04:43AM</p> <p>24 having those events occurred and been 10:04:45AM</p> <p>25 recorded in the public record and news 10:04:48AM</p> | <p style="text-align: right;">Page 64</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. That's correct. 10:05:59AM</p> <p>3 Q. And then the third one is 100 10:06:00AM</p> <p>4 pages? 10:06:02AM</p> <p>5 A. That appears to be correct. 10:06:04AM</p> <p>6 Q. And the first one is the FDA 10:06:05AM</p> <p>7 statistical reviewer's report? 10:06:08AM</p> <p>8 A. Correct. 10:06:10AM</p> <p>9 Q. And that's a Ph.D. statistician 10:06:11AM</p> <p>10 who issued statistical analysis regarding 10:06:13AM</p> <p>11 the entire CLASS study data; is that an 10:06:17AM</p> <p>12 accurate description of what that report 10:06:19AM</p> <p>13 does? 10:06:21AM</p> <p>14 A. I would agree, yes. 10:06:23AM</p> <p>15 Q. And then the second report, 10:06:24AM</p> <p>16 Exhibit B to the Philips affidavit, is the 10:06:26AM</p> <p>17 gastrointestinal doctor's review of the 10:06:29AM</p> <p>18 entire CLASS study data; is that fair to 10:06:31AM</p> <p>19 say? 10:06:34AM</p> <p>20 A. That is correct. 10:06:37AM</p> <p>21 Q. And then the third one is 10:06:38AM</p> <p>22 another medical reviewer's analysis of the 10:06:39AM</p> <p>23 entire study data? 10:06:42AM</p> <p>24 A. Correct. 10:06:46AM</p> <p>25 Q. And these are, would you agree 10:06:46AM</p>                                                                |
| <p style="text-align: right;">Page 63</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 media and so forth, you don't have an 10:04:49AM</p> <p>3 independent personal basis to opine other 10:04:52AM</p> <p>4 than relying on what Dr. Fiorino said that 10:04:55AM</p> <p>5 these documents, the briefing materials, 10:04:58AM</p> <p>6 would be posted on the Internet one day 10:05:00AM</p> <p>7 prior to the February 7th, 2001 Advisory 10:05:02AM</p> <p>8 Committee meeting? 10:05:05AM</p> <p>9 MR. WANG: Objection to form. 10:05:07AM</p> <p>10 A. That is correct. 10:05:08AM</p> <p>11 Q. And would you agree with me, 10:05:21AM</p> <p>12 looking at Exhibit 506, there is these 10:05:23AM</p> <p>13 three FDA reviewer reports that are 10:05:26AM</p> <p>14 Exhibits A, B and C, the first one I 10:05:28AM</p> <p>15 believe is approximately 100 pages; is 10:05:31AM</p> <p>16 that correct? 10:05:49AM</p> <p>17 MR. WANG: I think that's not 10:05:49AM</p> <p>18 right. 10:05:50AM</p> <p>19 MR. SAHAM: Actually, I think I 10:05:50AM</p> <p>20 have them out of order. 10:05:51AM</p> <p>21 Q. The first one is about 22 10:05:52AM</p> <p>22 pages; is that correct? 10:05:55AM</p> <p>23 A. That's correct. 10:05:56AM</p> <p>24 Q. And the second one is about 93 10:05:56AM</p> <p>25 pages? 10:05:59AM</p>                                                                                                | <p style="text-align: right;">Page 65</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 with me, that these are highly-trained 10:06:49AM</p> <p>3 professionals, the two medical doctors and 10:06:52AM</p> <p>4 then the Ph.D. statistician, and that 10:06:54AM</p> <p>5 their analysis is certainly derived from 10:06:57AM</p> <p>6 their expertise in their given fields? 10:07:00AM</p> <p>7 A. I would presume that. 10:07:03AM</p> <p>8 Q. And you are not a 10:07:04AM</p> <p>9 gastroenterologist? 10:07:07AM</p> <p>10 A. That is correct. 10:07:09AM</p> <p>11 Q. And you are not -- although I 10:07:09AM</p> <p>12 know you are a professor who has training 10:07:12AM</p> <p>13 in statistics; is that fair to say? 10:07:14AM</p> <p>14 A. That is correct. 10:07:16AM</p> <p>15 Q. But you are not a statistical 10:07:18AM</p> <p>16 expert? Would you hold yourself out as a 10:07:20AM</p> <p>17 statistical expert? 10:07:21AM</p> <p>18 A. I don't teach statistics. I 10:07:21AM</p> <p>19 use them a lot. 10:07:23AM</p> <p>20 Q. And would you say most 10:07:24AM</p> <p>21 financial analysts, although not all, most 10:07:28AM</p> <p>22 of them are not Ph.D. statisticians; is 10:07:30AM</p> <p>23 that fair to say? 10:07:33AM</p> <p>24 A. As a general statement, that 10:07:37AM</p> <p>25 would be fair. 10:07:39AM</p> |

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| Page 66                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 68                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And most of them aren't, 10:07:39AM</p> <p>3 although some are, most of them aren't 10:07:40AM</p> <p>4 medical doctors; is that fair to say? 10:07:43AM</p> <p>5 A. As a general matter, that's 10:07:45AM</p> <p>6 correct. In the pharmaceutical industry, 10:07:47AM</p> <p>7 I don't know whether they mostly would or 10:07:49AM</p> <p>8 mostly would not have M.D.s. 10:07:53AM</p> <p>9 Q. And you would agree with me 10:07:55AM</p> <p>10 that the information contained -- and 10:07:57AM</p> <p>11 maybe I shouldn't ask it that way because 10:07:59AM</p> <p>12 I'm not sure whether you agree with me. 10:08:01AM</p> <p>13 Is it your opinion that the 10:08:03AM</p> <p>14 information contained in Exhibits A 10:08:04AM</p> <p>15 through C of Exhibit 506 are relatively 10:08:06AM</p> <p>16 complex information? 10:08:09AM</p> <p>17 MR. WANG: Objection to form. 10:08:11AM</p> <p>18 A. Well, I'm sure there would be 10:08:11AM</p> <p>19 complexities in some of the data. But 10:08:14AM</p> <p>20 with respect to the salient issues here, 10:08:18AM</p> <p>21 which are the alleged corrective 10:08:20AM</p> <p>22 disclosures, they are not complicated at 10:08:22AM</p> <p>23 all. 10:08:25AM</p> <p>24 And somebody who is an analyst 10:08:25AM</p> <p>25 following Pharmacia and pharmaceutical 10:08:27AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 I teach my students in a 10:09:27AM</p> <p>3 valuation course that if they take a job 10:09:29AM</p> <p>4 as an analyst, they are going to have a 10:09:32AM</p> <p>5 valuation model effectively programmed in 10:09:34AM</p> <p>6 their head and they are going to know 10:09:37AM</p> <p>7 salient questions to ask and they are 10:09:39AM</p> <p>8 going to know how to go through documents 10:09:41AM</p> <p>9 and quickly cut to the chase and take that 10:09:43AM</p> <p>10 information and process it through their 10:09:45AM</p> <p>11 valuation model either formally or 10:09:47AM</p> <p>12 literally through just thinking it 10:09:49AM</p> <p>13 through, what are the implications of this 10:09:52AM</p> <p>14 information and how does it affect my 10:09:54AM</p> <p>15 valuation of the company. 10:09:55AM</p> <p>16 And as I said, if you look at 10:09:57AM</p> <p>17 the alleged misrepresentations as 10:10:00AM</p> <p>18 identified in the second interrogatory, 10:10:03AM</p> <p>19 and then you look at the statistical 10:10:05AM</p> <p>20 reviewer briefing document, in my opinion 10:10:07AM</p> <p>21 it wouldn't take long for someone to 10:10:10AM</p> <p>22 identify those alleged corrective 10:10:12AM</p> <p>23 disclosures. 10:10:15AM</p> <p>24 Q. When an earnings announcement 10:10:15AM</p> <p>25 is released, is there a conflicting 10:10:17AM</p> |
| Page 67                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 69                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 companies more generally would very 10:08:30AM</p> <p>3 quickly be able to go through the 10:08:32AM</p> <p>4 statistical reviewer briefing document and 10:08:34AM</p> <p>5 identify the information that plaintiffs 10:08:37AM</p> <p>6 claim was misrepresented in the second 10:08:41AM</p> <p>7 interrogatory. 10:08:45AM</p> <p>8 Q. Are you an expert on depletion 10:08:45AM</p> <p>9 of susceptibles in clinical trials as a 10:08:48AM</p> <p>10 result of informative censoring? 10:08:51AM</p> <p>11 A. No. 10:08:53AM</p> <p>12 Q. Do you think most of the 10:08:53AM</p> <p>13 financial analysts -- strike that. 10:08:57AM</p> <p>14 Have you ever met an analyst 10:08:59AM</p> <p>15 who was an expert in depletion of 10:09:03AM</p> <p>16 susceptibles in a clinical trial due to 10:09:06AM</p> <p>17 informative censoring? 10:09:09AM</p> <p>18 A. Well, given the work I do, I 10:09:10AM</p> <p>19 normally wouldn't have an occasion to meet 10:09:12AM</p> <p>20 such an analyst. But I would think that 10:09:14AM</p> <p>21 analysts who are covering companies like 10:09:16AM</p> <p>22 Pharmacia are going to know what they need 10:09:18AM</p> <p>23 to know and it has been my experience that 10:09:20AM</p> <p>24 analysts very quickly can process 10:09:24AM</p> <p>25 information. 10:09:25AM</p>               | <p>1 LEHN - CONFIDENTIAL</p> <p>2 earnings announcement released at the same 10:10:19AM</p> <p>3 time in your understanding? 10:10:21AM</p> <p>4 MR. WANG: Objection to form. 10:10:22AM</p> <p>5 Vague and ambiguous. 10:10:23AM</p> <p>6 Q. That was a bad question. 10:10:24AM</p> <p>7 When a company releases its 10:10:25AM</p> <p>8 earnings, right, it is describing what it 10:10:27AM</p> <p>9 earned the prior quarter? 10:10:28AM</p> <p>10 A. That's correct. 10:10:29AM</p> <p>11 Q. And usually the company issues 10:10:30AM</p> <p>12 a press release in that regard? 10:10:32AM</p> <p>13 A. Usually, that's correct. 10:10:33AM</p> <p>14 Q. And are you aware of any 10:10:35AM</p> <p>15 occasion when a company issues an earnings 10:10:36AM</p> <p>16 press release that some other entity 10:10:39AM</p> <p>17 offers an earnings release that is 10:10:41AM</p> <p>18 contradictory to the earnings release 10:10:45AM</p> <p>19 issued by the company? 10:10:49AM</p> <p>20 MR. WANG: Objection to form. 10:10:50AM</p> <p>21 A. I don't know about another 10:10:51AM</p> <p>22 entity issuing a contradictory earnings 10:10:53AM</p> <p>23 number, but within an earnings 10:10:56AM</p> <p>24 announcement there can be all sorts of 10:10:58AM</p> <p>25 complexities, and you see this in 10:11:00AM</p>                                                                                                   |

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| <p style="text-align: right;">Page 70</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 conference calls where there are all sorts 10:11:03AM</p> <p>3 of questions that the analysts have about 10:11:04AM</p> <p>4 the earnings, you know, what's the source 10:11:06AM</p> <p>5 of the earnings change, you know, is it a 10:11:08AM</p> <p>6 recurring item, is it related to 10:11:10AM</p> <p>7 accounting convention or your revenue 10:11:13AM</p> <p>8 recognition policy, what implications does 10:11:17AM</p> <p>9 this have for growth. 10:11:20AM</p> <p>10 There are all sorts of 10:11:21AM</p> <p>11 complexities that come out when a company 10:11:23AM</p> <p>12 issues earnings, and very often when a 10:11:25AM</p> <p>13 company issues disappointing earnings, you 10:11:28AM</p> <p>14 have management trying to place a positive 10:11:31AM</p> <p>15 spin, their color, saying things aren't as 10:11:34AM</p> <p>16 bad as the earnings numbers look. 10:11:39AM</p> <p>17 So the market has to process 10:11:40AM</p> <p>18 through all of that information. It is 10:11:42AM</p> <p>19 not -- it is not simply robotically 10:11:43AM</p> <p>20 responding to an earnings number. 10:11:46AM</p> <p>21 Q. My question is a little 10:11:47AM</p> <p>22 different. I'm talking about 10:11:49AM</p> <p>23 contradictions. Usually when a company 10:11:53AM</p> <p>24 issues its earnings it says what its 10:11:56AM</p> <p>25 revenue is; is that correct? That's one 10:11:58AM</p> | <p style="text-align: right;">Page 72</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 saying no, that number that you are 10:12:38AM</p> <p>3 reporting is not correct, it is really 10:12:39AM</p> <p>4 instead of a dollar per share, it is 42 10:12:42AM</p> <p>5 cents per share? 10:12:45AM</p> <p>6 MR. WANG: Objection to form. 10:12:47AM</p> <p>7 A. As a general matter, that would 10:12:48AM</p> <p>8 be correct. 10:12:50AM</p> <p>9 Q. So generally there is just 10:12:51AM</p> <p>10 one -- for revenue there is just one 10:12:55AM</p> <p>11 number provided by the company and for 10:12:57AM</p> <p>12 earnings there is one number provided by a 10:12:59AM</p> <p>13 company and then it is for the analysts 10:13:01AM</p> <p>14 and/or other market participants to figure 10:13:04AM</p> <p>15 out for themselves what that means for the 10:13:07AM</p> <p>16 future valuation of the company; is that 10:13:09AM</p> <p>17 fair to say? 10:13:11AM</p> <p>18 MR. WANG: Objection to form. 10:13:11AM</p> <p>19 A. Right, but analysts -- again, 10:13:12AM</p> <p>20 it is similar to the dividend discussion, 10:13:14AM</p> <p>21 it is not simply the earnings number, but 10:13:16AM</p> <p>22 it is the reason for the earnings number 10:13:18AM</p> <p>23 and there are lots of complications that 10:13:20AM</p> <p>24 go into revising a forecast or revising a 10:13:23AM</p> <p>25 valuation model when a company reports its 10:13:26AM</p> |
| <p style="text-align: right;">Page 71</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 of the items they issue a number on? 10:11:59AM</p> <p>3 A. Usually, that's correct. 10:11:59AM</p> <p>4 Q. And then they will also issue 10:12:00AM</p> <p>5 maybe an earnings per share amount? 10:12:02AM</p> <p>6 A. Correct. 10:12:04AM</p> <p>7 Q. And there is usually, it is 10:12:04AM</p> <p>8 just one number, the company issues that 10:12:06AM</p> <p>9 number, correct, for each of the 10:12:08AM</p> <p>10 categories? 10:12:10AM</p> <p>11 MR. WANG: Objection to form. 10:12:10AM</p> <p>12 Q. That's a bad question. Thank 10:12:11AM</p> <p>13 you for the objection. 10:12:13AM</p> <p>14 What I'm getting at is the raw 10:12:13AM</p> <p>15 information is provided by the company in 10:12:20AM</p> <p>16 an earnings announcement; is that 10:12:21AM</p> <p>17 correct? 10:12:24AM</p> <p>18 MR. WANG: Objection to form. 10:12:24AM</p> <p>19 A. I'm not sure what you mean by 10:12:28AM</p> <p>20 "the raw information." 10:12:30AM</p> <p>21 Q. Well, the revenue information 10:12:30AM</p> <p>22 and the earnings number, that's provided 10:12:31AM</p> <p>23 by the company; is that correct? 10:12:33AM</p> <p>24 A. That is correct. 10:12:34AM</p> <p>25 Q. And there is not another entity 10:12:34AM</p>                                                                                                                                                                             | <p style="text-align: right;">Page 73</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 earnings. 10:13:29AM</p> <p>3 Q. Would it be more difficult for 10:13:29AM</p> <p>4 an analyst to analyze an earnings number, 10:13:31AM</p> <p>5 say, we will just pick, say IBM issues an 10:13:35AM</p> <p>6 earnings announcement that they made a 10:13:39AM</p> <p>7 billion dollars that year in revenue, 10:13:41AM</p> <p>8 would it be more difficult for an analyst 10:13:43AM</p> <p>9 to absorb that information if on the very 10:13:46AM</p> <p>10 same day at the exact same time the SEC 10:13:48AM</p> <p>11 issued an earnings release about IBM that 10:13:53AM</p> <p>12 said they only earned \$750 million per 10:13:56AM</p> <p>13 share? 10:13:59AM</p> <p>14 MR. WANG: Objection to form. 10:13:59AM</p> <p>15 Incomplete hypothetical. 10:14:00AM</p> <p>16 Q. Could that confuse the market's 10:14:02AM</p> <p>17 ability to digest information? 10:14:04AM</p> <p>18 MR. WANG: Same objection. 10:14:06AM</p> <p>19 Vague and ambiguous, too. 10:14:08AM</p> <p>20 A. Well, I think if the SEC were 10:14:09AM</p> <p>21 to make such an announcement, I don't 10:14:12AM</p> <p>22 think that would be all that confusing to 10:14:15AM</p> <p>23 the market. It would say this company is 10:14:16AM</p> <p>24 in trouble, the SEC is about to launch 10:14:18AM</p> <p>25 some sort of action basically accusing 10:14:21AM</p>                             |

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| <p style="text-align: right;">Page 74</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 them of lying about their financials, and 10:14:23AM</p> <p>3 that could be viewed by analysts as 10:14:25AM</p> <p>4 perhaps a simpler way for it to revalue a 10:14:28AM</p> <p>5 company than other earnings announcements. 10:14:32AM</p> <p>6 Q. What if -- let's change my 10:14:35AM</p> <p>7 hypothetical a little bit -- what if a 10:14:37AM</p> <p>8 minority shareholder in IBM on that same 10:14:39AM</p> <p>9 day that the company said they earned a 10:14:43AM</p> <p>10 billion dollars a share issued a press 10:14:44AM</p> <p>11 release, let's say a well-respected, like 10:14:46AM</p> <p>12 a Buffett sort of guy, issued his own 10:14:48AM</p> <p>13 revenue and earnings numbers for IBM and 10:14:51AM</p> <p>14 said it was double what the company 10:14:54AM</p> <p>15 reported. 10:14:55AM</p> <p>16 Would that confuse the market's 10:14:55AM</p> <p>17 ability to process the information? 10:14:58AM</p> <p>18 MR. WANG: Objection to form. 10:14:59AM</p> <p>19 A. I don't know what you mean by 10:15:00AM</p> <p>20 "confuse." That if there was additional 10:15:02AM</p> <p>21 information, then the market would process 10:15:04AM</p> <p>22 that additional information and if the 10:15:06AM</p> <p>23 market for the underlying security is 10:15:09AM</p> <p>24 efficient that process would occur very 10:15:11AM</p> <p>25 quickly. 10:15:13AM</p> | <p style="text-align: right;">Page 76</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 opinion that there were delayed reactions 10:16:04AM</p> <p>3 in AOL Time Warner, but I will refresh my 10:16:05AM</p> <p>4 memory as to the context of that analysis. 10:16:08AM</p> <p>5 Q. But you do agree with me and 10:16:10AM</p> <p>6 you testified earlier that in AOL it was 10:16:11AM</p> <p>7 appropriate to examine a two-day window or 10:16:13AM</p> <p>8 a multi-day window to accurately analyze 10:16:16AM</p> <p>9 loss causation and materiality in that 10:16:18AM</p> <p>10 context? 10:16:21AM</p> <p>11 MR. WANG: Objection to form. 10:16:21AM</p> <p>12 A. I would have to go back and 10:16:22AM</p> <p>13 review both the assignment in AOL and the 10:16:24AM</p> <p>14 facts in AOL before I would agree with 10:16:27AM</p> <p>15 that. 10:16:29AM</p> <p>16 Q. But as we sit here today, the 10:16:31AM</p> <p>17 testimony that I read you previously, that 10:16:33AM</p> <p>18 was truthful and accurate when you gave 10:16:34AM</p> <p>19 it? 10:16:36AM</p> <p>20 A. And it is truthful and accurate 10:16:36AM</p> <p>21 today as I indicated, that if there was 10:16:38AM</p> <p>22 legitimate follow-on information, then it 10:16:40AM</p> <p>23 can be appropriate to use a two-day 10:16:42AM</p> <p>24 window. 10:16:44AM</p> <p>25 Q. And one form of follow-on 10:16:45AM</p> |
| <p style="text-align: right;">Page 75</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Could it, in your opinion, take 10:15:13AM</p> <p>3 longer for the market to absorb two 10:15:15AM</p> <p>4 contrary earnings announcements like I've 10:15:18AM</p> <p>5 described, one by IBM and one by Buffett 10:15:21AM</p> <p>6 about IBM, could that delay the market's 10:15:25AM</p> <p>7 reaction and make it take longer for the 10:15:28AM</p> <p>8 market to process the meaning of that 10:15:30AM</p> <p>9 information? 10:15:31AM</p> <p>10 MR. WANG: Same objections. 10:15:31AM</p> <p>11 A. Not if one has opined that the 10:15:33AM</p> <p>12 market for the security is efficient, 10:15:35AM</p> <p>13 which means that as information comes out, 10:15:37AM</p> <p>14 it is processed rapidly and fairly 10:15:39AM</p> <p>15 reflected in the security price. 10:15:42AM</p> <p>16 Now, if you stray from the 10:15:45AM</p> <p>17 assumption that the market for the 10:15:47AM</p> <p>18 security is efficient, then sure, there 10:15:48AM</p> <p>19 could be a delayed reaction. 10:15:50AM</p> <p>20 Q. Such as what you observed in 10:15:53AM</p> <p>21 the AOL Time Warner context, it took two 10:15:56AM</p> <p>22 days for the market to fully absorb that 10:15:59AM</p> <p>23 information? 10:16:01AM</p> <p>24 MR. WANG: Objection to form. 10:16:02AM</p> <p>25 A. I don't recall forming an 10:16:03AM</p>                                              | <p style="text-align: right;">Page 77</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 information can be the publication of an 10:16:47AM</p> <p>3 analyst report; is that correct? 10:16:49AM</p> <p>4 A. Not just the publication of an 10:16:50AM</p> <p>5 analyst report, but new information in the 10:16:52AM</p> <p>6 analyst report, new factual information in 10:16:55AM</p> <p>7 the analyst report. 10:16:57AM</p> <p>8 MR. WANG: If you are moving 10:16:59AM</p> <p>9 off your hypos, can we take a break or 10:17:00AM</p> <p>10 take a break soon? 10:17:03AM</p> <p>11 MR. SAHAM: Sure. We will 10:17:05AM</p> <p>12 definitely take a break in a minute or 10:17:06AM</p> <p>13 two. 10:17:08AM</p> <p>14 Q. Could the source of 10:17:12AM</p> <p>15 information, could that be important and 10:17:14AM</p> <p>16 make the information new if it was coming 10:17:19AM</p> <p>17 from a different source? 10:17:21AM</p> <p>18 MR. WANG: Objection to form. 10:17:22AM</p> <p>19 A. I'm not sure I understand. 10:17:23AM</p> <p>20 Q. Well, if there was information 10:17:24AM</p> <p>21 related to the same topic on one day and 10:17:26AM</p> <p>22 then it came from a different source the 10:17:29AM</p> <p>23 second day, could that be considered new 10:17:31AM</p> <p>24 information that the market would react to 10:17:33AM</p> <p>25 in your opinion? 10:17:34AM</p>              |

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| <p style="text-align: right;">Page 78</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection to form. 10:17:36AM</p> <p>3 A. Again, I'm not following the 10:17:37AM</p> <p>4 question. 10:17:40AM</p> <p>5 Q. Okay. If you have got 10:17:40AM</p> <p>6 information, you know, like in this case 10:17:43AM</p> <p>7 we've got some data, you know, that those 10:17:44AM</p> <p>8 five facts are ascertainable from -- are 10:17:47AM</p> <p>9 you with me? 10:17:49AM</p> <p>10 A. Uh-huh. 10:17:50AM</p> <p>11 Q. And I think your opinion is 10:17:51AM</p> <p>12 that the data was -- those five facts were 10:17:52AM</p> <p>13 ascertainable from the data that's 10:17:55AM</p> <p>14 contained in those three reports, Exhibits 10:17:58AM</p> <p>15 A through C of Exhibit 506; is that 10:18:00AM</p> <p>16 correct? 10:18:03AM</p> <p>17 A. Uh-huh, that's correct. 10:18:03AM</p> <p>18 Q. And if on the following day 10:18:05AM</p> <p>19 information was amplified or provided in a 10:18:08AM</p> <p>20 different form or from a different source, 10:18:12AM</p> <p>21 could that be considered new information 10:18:15AM</p> <p>22 in your opinion? 10:18:17AM</p> <p>23 MR. WANG: Objection to form. 10:18:19AM</p> <p>24 A. Not in this case. It is very 10:18:20AM</p> <p>25 clear that the alleged corrective 10:18:24AM</p>                                                                               | <p style="text-align: right;">Page 80</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And when you say "distinct," 10:19:26AM</p> <p>3 could that be new information? 10:19:27AM</p> <p>4 MR. WANG: Objection to form. 10:19:29AM</p> <p>5 Q. You used the term "distinct." 10:19:30AM</p> <p>6 A. Distinct is different, 10:19:32AM</p> <p>7 different information, that in my opinion 10:19:33AM</p> <p>8 the alleged corrective disclosures were 10:19:36AM</p> <p>9 made on the morning of February 6th. 10:19:39AM</p> <p>10 I think even Dr. Feinstein 10:19:42AM</p> <p>11 agrees that there was no additional 10:19:45AM</p> <p>12 corrective disclosure. His view is that 10:19:47AM</p> <p>13 it just took the market a long time to 10:19:49AM</p> <p>14 process this information, which means that 10:19:50AM</p> <p>15 he is not assuming that the market for 10:19:52AM</p> <p>16 Pharmacia stock is efficient. 10:19:53AM</p> <p>17 MR. SAHAM: Okay, we can take a 10:19:56AM</p> <p>18 break now. I think your counsel wants to 10:19:57AM</p> <p>19 take a break. 10:19:59AM</p> <p>20 MR. WANG: Yeah, that would be 10:20:00AM</p> <p>21 great. 10:20:02AM</p> <p>22 THE VIDEOGRAPHER: The time is 10:20:02AM</p> <p>23 approximately 10:19 a.m. This is the end 10:20:03AM</p> <p>24 of media number one. We are off the 10:20:05AM</p> <p>25 record. 10:20:07AM</p>                                         |
| <p style="text-align: right;">Page 79</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 disclosures were made early in the morning 10:18:26AM</p> <p>3 of February 6th and they were readily 10:18:28AM</p> <p>4 ascertainable from the statistical 10:18:32AM</p> <p>5 reviewer briefing documents and it was 10:18:35AM</p> <p>6 factual information that was provided in 10:18:38AM</p> <p>7 this briefing document. 10:18:41AM</p> <p>8 So opinions about that the next 10:18:44AM</p> <p>9 day or reactions to that information in my 10:18:47AM</p> <p>10 opinion may be related, but they are 10:18:49AM</p> <p>11 distinct from the alleged corrective 10:18:52AM</p> <p>12 disclosures, all of which were released on 10:18:54AM</p> <p>13 the morning of February 6th. 10:18:56AM</p> <p>14 Q. And what do you mean by 10:18:57AM</p> <p>15 "distinct"? 10:18:59AM</p> <p>16 A. Different. Information the 10:18:59AM</p> <p>17 next day might be related in the sense 10:19:04AM</p> <p>18 that it is associated with everything that 10:19:06AM</p> <p>19 was released on the morning of the 6th, 10:19:08AM</p> <p>20 but related, but distinct. 10:19:11AM</p> <p>21 So for purposes of loss 10:19:14AM</p> <p>22 causation, looking at how stock prices 10:19:15AM</p> <p>23 react to related information the next day 10:19:19AM</p> <p>24 is irrelevant because that's different 10:19:22AM</p> <p>25 information. 10:19:25AM</p> | <p style="text-align: right;">Page 81</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 (Recess taken.) 10:20:08AM</p> <p>3 THE VIDEOGRAPHER: The time is 10:36:32AM</p> <p>4 approximately 10:36 a.m. This is the 10:36:41AM</p> <p>5 beginning of media number two. We are on 10:36:43AM</p> <p>6 the record. 10:36:46AM</p> <p>7 BY MR. SAHAM: 10:36:47AM</p> <p>8 Q. Dr. Lehn, focusing on those 10:36:47AM</p> <p>9 five facts in paragraph 72 of your report 10:36:49AM</p> <p>10 that plaintiffs allege weren't disclosed 10:36:52AM</p> <p>11 until February 2001, do you have any 10:36:54AM</p> <p>12 evidence or have you seen any evidence in 10:36:57AM</p> <p>13 the form of an analyst report, media 10:36:59AM</p> <p>14 report or any other, that an analyst or a 10:37:02AM</p> <p>15 media outlet did ascertain those five 10:37:05AM</p> <p>16 facts on February 6th, or any of those 10:37:08AM</p> <p>17 five facts? 10:37:13AM</p> <p>18 MR. WANG: Objection to form. 10:37:13AM</p> <p>19 A. Well, I don't recall that they 10:37:14AM</p> <p>20 specifically addressed each of those five 10:37:24AM</p> <p>21 points, and I would have to go back and 10:37:26AM</p> <p>22 refresh my memory by looking at the 10:37:29AM</p> <p>23 analyst reports that did come out and see 10:37:30AM</p> <p>24 what they said that might have touched on 10:37:32AM</p> <p>25 any of those five points. 10:37:34AM</p> |

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| Page 82                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 84                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 But, again, that would be 10:37:37AM</p> <p>3 irrelevant as well because if they didn't 10:37:39AM</p> <p>4 say anything about it, it usually is 10:37:41AM</p> <p>5 indicative that they didn't think it was 10:37:44AM</p> <p>6 particularly important. Analysts tend to 10:37:46AM</p> <p>7 write about what they think is important. 10:37:49AM</p> <p>8 Q. And analysts certainly wrote 10:37:51AM</p> <p>9 about the CLASS trial after the close of 10:37:53AM</p> <p>10 the market on February 7th and on February 10:37:55AM</p> <p>11 8th, 2001; is that correct? 10:37:57AM</p> <p>12 MR. WANG: Objection to form. 10:37:58AM</p> <p>13 A. There were analyst reports that 10:37:59AM</p> <p>14 refer to that, correct. 10:38:02AM</p> <p>15 Q. And one of them even was 10:38:02AM</p> <p>16 entitled CLASS Flunks Out; is that 10:38:06AM</p> <p>17 correct? 10:38:08AM</p> <p>18 A. I recall seeing that one, yes. 10:38:08AM</p> <p>19 Q. There was no similar analyst 10:38:10AM</p> <p>20 report directly addressing those five 10:38:12AM</p> <p>21 facts that are listed in paragraph 72 on 10:38:14AM</p> <p>22 February 6th; is that correct? 10:38:18AM</p> <p>23 MR. WANG: Objection to form. 10:38:19AM</p> <p>24 A. Again, I don't recall an 10:38:22AM</p> <p>25 analyst report that went through those 10:38:25AM</p>                                | <p>1 LEHN - CONFIDENTIAL</p> <p>2 analyst report or a media article that was 10:39:18AM</p> <p>3 evidence that the market ascertained any 10:39:22AM</p> <p>4 of those five facts that are listed in 10:39:25AM</p> <p>5 paragraph 72 on February 6th, 2001? 10:39:27AM</p> <p>6 MR. WANG: Objection. 10:39:30AM</p> <p>7 A. As I indicated, I can't recall 10:39:32AM</p> <p>8 an analyst report that directly addressed 10:39:38AM</p> <p>9 those five issues, but that, in my 10:39:40AM</p> <p>10 opinion, is not a test as to whether or 10:39:43AM</p> <p>11 not the information was ascertainable. It 10:39:46AM</p> <p>12 is a factual issue as to whether it was 10:39:47AM</p> <p>13 ascertainable. And it was. 10:39:50AM</p> <p>14 Q. But there is no evidence that 10:39:51AM</p> <p>15 an analyst through a written publication 10:39:53AM</p> <p>16 or some other form of direct evidence 10:39:57AM</p> <p>17 actually ascertained those five facts; is 10:39:59AM</p> <p>18 that correct, sir? 10:40:03AM</p> <p>19 MR. WANG: Objection to form. 10:40:03AM</p> <p>20 A. Again, as I indicated, I'm not 10:40:08AM</p> <p>21 aware of an analyst report that directly 10:40:09AM</p> <p>22 addressed those five facts. 10:40:11AM</p> <p>23 Q. And are you offering an opinion 10:40:13AM</p> <p>24 in this case that the reports, Exhibit A, 10:40:16AM</p> <p>25 B and C of Exhibit 506, are not complex? 10:40:19AM</p>                    |
| Page 83                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 85                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 five points and systematically said 10:38:27AM</p> <p>3 something about it. But there may have 10:38:29AM</p> <p>4 been things in the analyst reports that 10:38:33AM</p> <p>5 touched on some of those points. 10:38:35AM</p> <p>6 Q. But as we sit here today, you 10:38:37AM</p> <p>7 don't have one particular analyst report 10:38:39AM</p> <p>8 in your mind that addresses those -- any 10:38:40AM</p> <p>9 of those five points on February 6th? 10:38:43AM</p> <p>10 A. As I sit here, that's correct. 10:38:44AM</p> <p>11 But, again, that would be irrelevant 10:38:46AM</p> <p>12 certainly for my opinions in this case. 10:38:50AM</p> <p>13 Q. Is there anything you could do 10:38:52AM</p> <p>14 to refresh your recollection to see if you 10:38:53AM</p> <p>15 could -- I guess actually let me withdraw 10:38:55AM</p> <p>16 that question. 10:38:59AM</p> <p>17 My question is, you are not 10:38:59AM</p> <p>18 offering an opinion that there were any 10:39:02AM</p> <p>19 analyst reports on February 6th that 10:39:04AM</p> <p>20 address any of those five facts; is that 10:39:07AM</p> <p>21 correct? 10:39:10AM</p> <p>22 MR. WANG: Objection to form. 10:39:10AM</p> <p>23 Q. "Address" is a bad question. 10:39:11AM</p> <p>24 You are not offering an opinion 10:39:13AM</p> <p>25 that on February 6th of 2001 there was an 10:39:14AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Well, you know, as I indicated 10:40:29AM</p> <p>3 earlier, there is a level of complexity in 10:40:34AM</p> <p>4 all sorts of announcements that companies 10:40:36AM</p> <p>5 make, including earnings announcements, 10:40:38AM</p> <p>6 dividend announcements. So there are 10:40:40AM</p> <p>7 always complexities associated with 10:40:43AM</p> <p>8 information releases. Very little 10:40:44AM</p> <p>9 information is devoid of complexity. 10:40:47AM</p> <p>10 The relevant information with 10:40:51AM</p> <p>11 respect to the alleged corrective 10:40:52AM</p> <p>12 disclosures, in my opinion, is not 10:40:54AM</p> <p>13 complex, that it was reviewed rather 10:40:58AM</p> <p>14 succinctly in the first few pages of the 10:41:00AM</p> <p>15 statistical reviewer's briefing document. 10:41:02AM</p> <p>16 So whereas there may be complex 10:41:04AM</p> <p>17 nuances associated with some of these 10:41:07AM</p> <p>18 documents, what's relevant is whether the 10:41:09AM</p> <p>19 information pertaining to the alleged 10:41:11AM</p> <p>20 corrective disclosures were ascertainable, 10:41:15AM</p> <p>21 and they were. 10:41:19AM</p> <p>22 And, furthermore, if one opines 10:41:20AM</p> <p>23 that the market for the security is 10:41:24AM</p> <p>24 efficient, that means that all information 10:41:29AM</p> <p>25 released on a given day would ultimately 10:41:30AM</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 affect the underlying security price on 10:41:35AM</p> <p>3 that day, regardless of the complexity of 10:41:37AM</p> <p>4 the information. 10:41:40AM</p> <p>5 Q. Are you an offering an opinion 10:41:43AM</p> <p>6 comparatively whether the information 10:41:57AM</p> <p>7 contained in the FDA reviewer reports was 10:41:59AM</p> <p>8 more or less complex than a typical 10:42:03AM</p> <p>9 earnings announcement? 10:42:06AM</p> <p>10 MR. WANG: Objection to form. 10:42:07AM</p> <p>11 A. I'm not making a comparison as 10:42:08AM</p> <p>12 to which is more or less complex. What I 10:42:19AM</p> <p>13 am saying is that Dr. Feinstein is 10:42:22AM</p> <p>14 incorrect when he assumes that earnings 10:42:25AM</p> <p>15 announcements are not complex or are less 10:42:28AM</p> <p>16 complex than the information contained in 10:42:33AM</p> <p>17 these briefing materials. He has no basis 10:42:34AM</p> <p>18 for saying that. 10:42:36AM</p> <p>19 Q. You are not going to offer an 10:42:37AM</p> <p>20 opinion at trial that the information 10:42:39AM</p> <p>21 contained in Exhibit 506 is not complex? 10:42:41AM</p> <p>22 MR. WANG: Objection to form. 10:42:46AM</p> <p>23 Asked and answered. 10:42:47AM</p> <p>24 A. I haven't been asked to offer 10:42:47AM</p> <p>25 any opinion of that sort. 10:42:50AM</p>                         | <p style="text-align: right;">Page 88</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 delayed reaction of the sort that 10:43:57AM</p> <p>3 Dr. Feinstein discusses. 10:43:58AM</p> <p>4 Q. Can confounding information 10:44:01AM</p> <p>5 affect or impact the rapidity of the price 10:44:06AM</p> <p>6 adjustment to corrective information? 10:44:08AM</p> <p>7 MR. WANG: Objection to form. 10:44:11AM</p> <p>8 Vague and ambiguous. 10:44:12AM</p> <p>9 A. Not if one, again, assumes that 10:44:19AM</p> <p>10 the market for the underlying security is 10:44:21AM</p> <p>11 efficient. If it is, by definition it 10:44:23AM</p> <p>12 means the market has processed that 10:44:26AM</p> <p>13 information rapidly and done so in an 10:44:28AM</p> <p>14 unbiased fashion. 10:44:31AM</p> <p>15 Dr. Feinstein has opined that 10:44:34AM</p> <p>16 the market for Pharmacia stock is 10:44:35AM</p> <p>17 efficient and yet he makes a delayed 10:44:37AM</p> <p>18 reaction into the analysis, which by 10:44:43AM</p> <p>19 definition means the market for the 10:44:45AM</p> <p>20 security is not efficient. 10:44:46AM</p> <p>21 Q. Would you agree that the 10:44:47AM</p> <p>22 company would have been in a good position 10:44:49AM</p> <p>23 to determine whether or not the 10:44:50AM</p> <p>24 information released on February 6th was 10:44:53AM</p> <p>25 complex or not? The "company" being 10:44:55AM</p> |
| <p style="text-align: right;">Page 87</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And have you formulated one? 10:42:52AM</p> <p>3 A. I haven't formulated an opinion 10:42:54AM</p> <p>4 as to the complexity of the information in 10:42:58AM</p> <p>5 its totality. And the reason I haven't is 10:43:01AM</p> <p>6 that that's irrelevant for purposes of my 10:43:05AM</p> <p>7 opinion, that if the market for an 10:43:07AM</p> <p>8 underlying security is efficient, then 10:43:10AM</p> <p>9 when information is released, that 10:43:12AM</p> <p>10 information would be rapidly reflected in 10:43:14AM</p> <p>11 that security price. 10:43:17AM</p> <p>12 Q. Even if it was confounded by 10:43:18AM</p> <p>13 other information? 10:43:20AM</p> <p>14 MR. WANG: Objection to form. 10:43:23AM</p> <p>15 Vague and ambiguous. 10:43:24AM</p> <p>16 A. Again, there are two issues. 10:43:24AM</p> <p>17 If there is confounding information that 10:43:28AM</p> <p>18 may affect the magnitude of the price 10:43:30AM</p> <p>19 change, if it is truly confounding, and it 10:43:35AM</p> <p>20 is new confounding information, not simply 10:43:41AM</p> <p>21 information that had previously been 10:43:44AM</p> <p>22 disclosed, then that potentially can have 10:43:45AM</p> <p>23 an effect on the security price. 10:43:50AM</p> <p>24 But there is no reason to 10:43:54AM</p> <p>25 believe that that would result in a 10:43:55AM</p> | <p style="text-align: right;">Page 89</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Pharmacia. 10:44:57AM</p> <p>3 A. Again, I think it is important 10:45:08AM</p> <p>4 to understand what you are referring to by 10:45:14AM</p> <p>5 "complex." Complex in some absolute sense 10:45:17AM</p> <p>6 or complex in some relative sense? I'm 10:45:20AM</p> <p>7 not sure how you are using the phrase. 10:45:25AM</p> <p>8 Q. Complex as far as difficult -- 10:45:26AM</p> <p>9 well, what's your definition of "complex"? 10:45:28AM</p> <p>10 A. Complicated. 10:45:31AM</p> <p>11 Q. Would the company be in a 10:45:32AM</p> <p>12 position to determine whether or not the 10:45:35AM</p> <p>13 information released in February -- on 10:45:37AM</p> <p>14 February 6th and 7th regarding the CLASS 10:45:40AM</p> <p>15 data, whether or not that information was 10:45:42AM</p> <p>16 complicated? 10:45:44AM</p> <p>17 MR. WANG: Objection. Vague 10:45:46AM</p> <p>18 and ambiguous. 10:45:47AM</p> <p>19 A. Well, again, I assume that 10:45:47AM</p> <p>20 there is a level of complication 10:45:49AM</p> <p>21 associated with some information in this 10:45:51AM</p> <p>22 document. But as I indicated before, 10:45:53AM</p> <p>23 there is complication associated with 10:45:56AM</p> <p>24 earnings announcements. There is 10:45:57AM</p> <p>25 complications associated with dividend 10:45:59AM</p>           |

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| Page 90                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 92                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 announcements, that most information is 10:46:01AM</p> <p>3 released by companies, especially 10:46:05AM</p> <p>4 companies the size of Pharmacia, has its 10:46:06AM</p> <p>5 complications. 10:46:10AM</p> <p>6 But if the market for that 10:46:11AM</p> <p>7 security is efficient by definition, 10:46:13AM</p> <p>8 notwithstanding the complications, that 10:46:17AM</p> <p>9 information is processed and it is 10:46:19AM</p> <p>10 processed rapidly by the market. 10:46:20AM</p> <p>11 Q. Now, are you offering an 10:46:23AM</p> <p>12 opinion relatively whether or not -- have 10:46:24AM</p> <p>13 you formulated an opinion relatively 10:46:27AM</p> <p>14 whether the release of the CLASS data on 10:46:29AM</p> <p>15 February 6th, whether that was more or 10:46:32AM</p> <p>16 less complex than an earnings announcement 10:46:34AM</p> <p>17 as addressed by Patell and Wolfson in 10:46:38AM</p> <p>18 their study? 10:46:41AM</p> <p>19 MR. WANG: Objection. 10:46:42AM</p> <p>20 A. As I indicated earlier, I'm not 10:46:43AM</p> <p>21 making a comparative statement there, no. 10:46:45AM</p> <p>22 Q. So you are not going to be 10:46:47AM</p> <p>23 offering that sort of opinion at trial, at 10:46:49AM</p> <p>24 least as you sit here today you do not 10:46:50AM</p> <p>25 plan on offering an opinion to the jury 10:46:52AM</p>                | <p>1 LEHN - CONFIDENTIAL</p> <p>2 whether it is complex, it is irrelevant, 10:47:54AM</p> <p>3 because if he has assumed that the market 10:47:57AM</p> <p>4 for this stock is efficient, regardless of 10:47:58AM</p> <p>5 the complexity, that information would be 10:48:01AM</p> <p>6 reflected in Pharmacia's stock price and 10:48:03AM</p> <p>7 it would be reflected quickly. 10:48:05AM</p> <p>8 Q. And what do you mean by 10:48:07AM</p> <p>9 "quickly"? 10:48:08AM</p> <p>10 A. Certainly within one trading 10:48:09AM</p> <p>11 day. 10:48:11AM</p> <p>12 Q. And is it your opinion that 10:48:11AM</p> <p>13 regardless of the complexity of 10:48:13AM</p> <p>14 information in an efficient market, the 10:48:15AM</p> <p>15 information will always be reflected -- 10:48:19AM</p> <p>16 I'm sorry, the market will have always -- 10:48:22AM</p> <p>17 I have to start that question over. It 10:48:25AM</p> <p>18 was a bad question. 10:48:27AM</p> <p>19 Is it your testimony that 10:48:28AM</p> <p>20 regardless of the complexity of 10:48:30AM</p> <p>21 information in an efficient market, a 10:48:33AM</p> <p>22 stock price will always adjust within one 10:48:37AM</p> <p>23 trading day? 10:48:40AM</p> <p>24 A. You know, I try to avoid the 10:48:41AM</p> <p>25 word "always," that when I refer to having 10:48:44AM</p>                                                                                      |
| Page 91                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 93                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 that comparatively the information 10:46:55AM</p> <p>3 disclosed in Exhibit 506 was more or less 10:46:58AM</p> <p>4 or equally complex as compared to the 10:47:01AM</p> <p>5 earnings and dividends announcements that 10:47:03AM</p> <p>6 Patell and Wolfson discussed? 10:47:05AM</p> <p>7 MR. WANG: Objection to form. 10:47:07AM</p> <p>8 Misstates his testimony. 10:47:08AM</p> <p>9 A. I'm not planning on making a 10:47:10AM</p> <p>10 statement of that sort. But it is 10:47:11AM</p> <p>11 important to note that Dr. Feinstein 10:47:15AM</p> <p>12 builds his assumption of a delayed 10:47:20AM</p> <p>13 reaction on the purported complexity of 10:47:22AM</p> <p>14 the information released on February 6th 10:47:25AM</p> <p>15 and tries to draw that as a distinguishing 10:47:28AM</p> <p>16 characteristic of this information as 10:47:30AM</p> <p>17 opposed to the earnings and dividend 10:47:33AM</p> <p>18 information that Patell and Wolfson point 10:47:35AM</p> <p>19 to. 10:47:38AM</p> <p>20 And it is my opinion that 10:47:39AM</p> <p>21 Dr. Feinstein has no basis for concluding 10:47:41AM</p> <p>22 that this information was more complex 10:47:44AM</p> <p>23 than the information contained in earnings 10:47:47AM</p> <p>24 announcements and dividend announcements. 10:47:49AM</p> <p>25 And, furthermore, regardless of 10:47:52AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 a scientific basis, what that means is 10:48:49AM</p> <p>3 based on accepted practice in the 10:48:52AM</p> <p>4 peer-reviewed literature, it is our 10:48:55AM</p> <p>5 understanding, and it is not just a 10:48:58AM</p> <p>6 theoretical understanding, it is based on 10:49:00AM</p> <p>7 hundreds of empirical studies, that 10:49:03AM</p> <p>8 securities prices react quickly to the 10:49:06AM</p> <p>9 release of new information. And it is not 10:49:08AM</p> <p>10 only new information about earnings and 10:49:11AM</p> <p>11 dividends, but takeovers and various other 10:49:12AM</p> <p>12 pieces of information. 10:49:16AM</p> <p>13 Now, does that mean that there 10:49:17AM</p> <p>14 is never an exception? There probably are 10:49:20AM</p> <p>15 exceptions. But you don't base an opinion 10:49:23AM</p> <p>16 on exceptions if you are trying to adhere 10:49:28AM</p> <p>17 to the scientific practice. And the 10:49:31AM</p> <p>18 scientific literature would argue and the 10:49:34AM</p> <p>19 evidence shows that even complex 10:49:38AM</p> <p>20 information, when it is released, is 10:49:41AM</p> <p>21 quickly reflected in securities prices if 10:49:44AM</p> <p>22 the market for the underlying security is 10:49:46AM</p> <p>23 efficient. 10:49:49AM</p> <p>24 Q. Is the complexity of 10:49:49AM</p> <p>25 information a factor that you would 10:49:51AM</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 consider in determining how long a price 10:49:52AM</p> <p>3 reaction would take? 10:49:55AM</p> <p>4 MR. WANG: In an efficient 10:49:58AM</p> <p>5 market? 10:49:59AM</p> <p>6 MR. SAHAM: Yes, in an 10:49:59AM</p> <p>7 efficient market. 10:50:00AM</p> <p>8 A. I'm not aware of any literature 10:50:01AM</p> <p>9 that shows that when the market for 10:50:06AM</p> <p>10 security is efficient the speed of price 10:50:10AM</p> <p>11 adjustment depends upon how complex the 10:50:12AM</p> <p>12 information is. As far as I'm aware, 10:50:15AM</p> <p>13 there is no scientific evidence to support 10:50:16AM</p> <p>14 that. 10:50:19AM</p> <p>15 And given that, it is my 10:50:20AM</p> <p>16 opinion that regardless of the level of 10:50:24AM</p> <p>17 complexity there would be a price impact. 10:50:29AM</p> <p>18 Now, oftentimes when people think about 10:50:36AM</p> <p>19 market efficiency, they think that that 10:50:39AM</p> <p>20 initial price impact would sort of not be 10:50:42AM</p> <p>21 affected by subsequent information 10:50:49AM</p> <p>22 releases that correct what had been 10:50:52AM</p> <p>23 released on the relevant day. So it may 10:50:56AM</p> <p>24 be that you get a price reaction and then 10:50:58AM</p> <p>25 the market learns more and then reacts to 10:51:01AM</p>                                                            | <p style="text-align: right;">Page 96</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 considered in analyzing the stock price; 10:52:02AM</p> <p>3 is that correct? 10:52:06AM</p> <p>4 MR. WANG: Objection to form. 10:52:06AM</p> <p>5 A. It depends on the facts of the 10:52:07AM</p> <p>6 case. But if there is new information 10:52:09AM</p> <p>7 about the information that had been 10:52:12AM</p> <p>8 disclosed on the prior day, then 10:52:14AM</p> <p>9 potentially depending on the facts of the 10:52:17AM</p> <p>10 case that would be relevant. 10:52:19AM</p> <p>11 Q. I want to show you what has 10:52:21AM</p> <p>12 previously been marked as Goldkind 10:52:22AM</p> <p>13 Plaintiffs' 2. Can you take a look at 10:52:26AM</p> <p>14 that document, please. 10:52:28AM</p> <p>15 (Witness perusing document.) 10:52:32AM</p> <p>16 Q. And Goldkind Exhibit 2 is the 10:52:36AM</p> <p>17 Gastrointestinal Review Highlights of the 10:52:38AM</p> <p>18 CLASS Study, Lawrence Goldkind, M.D. 10:52:40AM</p> <p>19 Is this a document you 10:52:44AM</p> <p>20 considered in formulating your opinions in 10:52:45AM</p> <p>21 this case? 10:52:47AM</p> <p>22 A. I don't know if this is -- I 10:52:51AM</p> <p>23 don't remember seeing this as a standalone 10:52:53AM</p> <p>24 document, but it might have been attached 10:52:55AM</p> <p>25 to some of the briefing materials that I 10:52:56AM</p> |
| <p style="text-align: right;">Page 95</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 that new information, so you get 10:51:03AM</p> <p>3 subsequent price changes. 10:51:05AM</p> <p>4 And those subsequent price 10:51:07AM</p> <p>5 changes may be additional information 10:51:09AM</p> <p>6 releases that clarify some complexities on 10:51:11AM</p> <p>7 a given day. But that's different than 10:51:14AM</p> <p>8 how the market reacts to the release of 10:51:20AM</p> <p>9 complex information on a given day. 10:51:22AM</p> <p>10 Q. So clarification of the 10:51:25AM</p> <p>11 information on a subsequent day could be 10:51:26AM</p> <p>12 something that would prolong the stock 10:51:28AM</p> <p>13 price reaction? 10:51:31AM</p> <p>14 MR. WANG: Objection to form. 10:51:33AM</p> <p>15 A. No, not to the release of the 10:51:34AM</p> <p>16 information on day one; that if there is a 10:51:35AM</p> <p>17 subsequent announcement that is relevant 10:51:38AM</p> <p>18 that maybe corrects the information that 10:51:43AM</p> <p>19 was released on the first day, the market 10:51:45AM</p> <p>20 may react to that and then it would be 10:51:48AM</p> <p>21 appropriate to consider both price 10:51:51AM</p> <p>22 reactions in tandem as being relevant. 10:51:53AM</p> <p>23 Q. So if there is a clarification 10:51:57AM</p> <p>24 the next day, that could be a subsequent 10:51:59AM</p> <p>25 piece of information that could be 10:52:01AM</p> | <p style="text-align: right;">Page 97</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 reviewed. 10:52:58AM</p> <p>3 Q. Do you know that Dr. Goldkind 10:52:59AM</p> <p>4 made a presentation on the morning of 10:53:00AM</p> <p>5 February 7th, 2001 regarding the CLASS 10:53:02AM</p> <p>6 study, the entire study results? 10:53:03AM</p> <p>7 A. I didn't know about the morning 10:53:05AM</p> <p>8 per se, but I know he made a presentation 10:53:06AM</p> <p>9 on the 7th. 10:53:08AM</p> <p>10 Q. And could that potentially -- 10:53:09AM</p> <p>11 if he clarified some of the information 10:53:11AM</p> <p>12 disclosed on February 6th, could that 10:53:14AM</p> <p>13 possibly impact your opinions in this 10:53:15AM</p> <p>14 case? 10:53:17AM</p> <p>15 MR. WANG: Objection to form. 10:53:17AM</p> <p>16 Vague and ambiguous. 10:53:18AM</p> <p>17 A. Not at all. Because the 10:53:19AM</p> <p>18 information that was the alleged 10:53:21AM</p> <p>19 corrective disclosure was released on the 10:53:24AM</p> <p>20 morning of February 6th, and as I've 10:53:26AM</p> <p>21 indicated the statistical review made it 10:53:30AM</p> <p>22 clear to whoever wanted to look at it that 10:53:32AM</p> <p>23 that information that was allegedly 10:53:34AM</p> <p>24 misrepresented was corrected in the 10:53:36AM</p> <p>25 statistical review briefing document. 10:53:39AM</p>                       |

25 (Pages 94 to 97)

## CONFIDENTIAL

| Page 98                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 100                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. That information was 10:53:42AM</p> <p>3 ascertainable from the statistical 10:53:43AM</p> <p>4 reviewer's briefing document; that's your 10:53:44AM</p> <p>5 opinion, correct? 10:53:46AM</p> <p>6 A. That is correct. 10:53:47AM</p> <p>7 Q. And you don't know whether 10:53:47AM</p> <p>8 analysts embodied in their reports 10:53:49AM</p> <p>9 actually ascertained that information, you 10:53:52AM</p> <p>10 are not offering an opinion in this case 10:53:53AM</p> <p>11 to that regard, are you, sir? 10:53:55AM</p> <p>12 A. But, again, that is irrelevant, 10:53:56AM</p> <p>13 that if the market for the security is 10:53:58AM</p> <p>14 efficient, then that information which was 10:54:00AM</p> <p>15 released on February 6th would be 10:54:02AM</p> <p>16 reflected in Pharmacia's stock price on 10:54:04AM</p> <p>17 February 6th. 10:54:06AM</p> <p>18 Q. Could you take a look at the 10:54:07AM</p> <p>19 second to last page of Goldkind Exhibit 2, 10:54:08AM</p> <p>20 it is the last three Bates numbers 233 for 10:54:11AM</p> <p>21 the record. And this page is labeled 10:54:14AM</p> <p>22 Overall Conclusions. Do you see that? 10:54:18AM</p> <p>23 A. I do. 10:54:20AM</p> <p>24 Q. And Dr. Goldkind's overall 10:54:21AM</p> <p>25 conclusions that he made in his 10:54:23AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 there is no difference between Celebrex 10:55:19AM</p> <p>3 and diclofenac on any of the eight 10:55:22AM</p> <p>4 endpoints considered as part of the JAMA 10:55:27AM</p> <p>5 article? 10:55:32AM</p> <p>6 MR. WANG: Objection to the 10:55:32AM</p> <p>7 form. 10:55:33AM</p> <p>8 A. That that was one of the 10:55:34AM</p> <p>9 statements that plaintiffs made in the 10:55:34AM</p> <p>10 second interrogatory response. 10:55:36AM</p> <p>11 Q. And here, Dr. Goldkind is 10:55:36AM</p> <p>12 emphasizing that there is no conclusions 10:55:38AM</p> <p>13 regarding safety as a result of CLASS that 10:55:40AM</p> <p>14 can -- and let me just read it. I was 10:55:44AM</p> <p>15 paraphrasing and your counsel will 10:55:46AM</p> <p>16 probably object. 10:55:48AM</p> <p>17 Dr. Goldkind here states "No 10:55:49AM</p> <p>18 conclusions regarding safety of Celebrex 10:55:51AM</p> <p>19 compared to traditional, less selective 10:55:54AM</p> <p>20 COX inhibitors as a group are possible." 10:55:56AM</p> <p>21 That's what he says, right, in 10:55:56AM</p> <p>22 this bullet point? 10:56:02AM</p> <p>23 A. That's correct. 10:56:02AM</p> <p>24 Q. If you turn back a few pages 10:56:02AM</p> <p>25 before, last three Bates numbers 229, do 10:56:04AM</p>                                         |
| Page 99                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 101                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 presentation on the morning of February 10:54:25AM</p> <p>3 7th, his second bullet point says "No 10:54:26AM</p> <p>4 conclusions regarding safety of Celebrex 10:54:30AM</p> <p>5 compared to traditional less selective COX 10:54:33AM</p> <p>6 inhibitors as a group are possible." 10:54:36AM</p> <p>7 Do you see that? 10:54:39AM</p> <p>8 A. Yes. 10:54:39AM</p> <p>9 Q. Would you consider that new 10:54:39AM</p> <p>10 information compared to what was released 10:54:40AM</p> <p>11 on February 6th? 10:54:43AM</p> <p>12 MR. WANG: Objection to form. 10:54:44AM</p> <p>13 Vague and ambiguous. 10:54:45AM</p> <p>14 A. Again, with respect to the 10:54:53AM</p> <p>15 information released on February 6th, the 10:54:55AM</p> <p>16 relevant information for purposes of my 10:54:57AM</p> <p>17 analysis were the alleged corrective 10:55:00AM</p> <p>18 disclosures. 10:55:02AM</p> <p>19 And this bullet point, as I sit 10:55:04AM</p> <p>20 here, doesn't add to that information, the 10:55:06AM</p> <p>21 alleged corrective disclosures on February 10:55:10AM</p> <p>22 6th. 10:55:12AM</p> <p>23 Q. Well, is one of the bullet 10:55:13AM</p> <p>24 points that plaintiffs point out and you 10:55:14AM</p> <p>25 reference in Exhibit 2 of your report that 10:55:18AM</p>                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 you see that? Again, it is labeled 10:56:11AM</p> <p>3 Overall Conclusions. 10:56:12AM</p> <p>4 The second bullet point, the 10:56:13AM</p> <p>5 last sentence, Dr. Goldkind states "No 10:56:15AM</p> <p>6 reference was seen between Celebrex and 10:56:17AM</p> <p>7 diclofenac." Do you see that? 10:56:20AM</p> <p>8 A. I do. 10:56:21AM</p> <p>9 Q. Do you consider this new 10:56:21AM</p> <p>10 information that went into the market on 10:56:23AM</p> <p>11 the morning of February 7th? 10:56:25AM</p> <p>12 A. Not that sentence, because that 10:56:27AM</p> <p>13 information was ascertainable from the 10:56:29AM</p> <p>14 statistical reviewer's briefing document. 10:56:33AM</p> <p>15 Q. But the fact that it is stated 10:56:35AM</p> <p>16 in plain, simple English, could that be 10:56:37AM</p> <p>17 called a clarification in your -- 10:56:39AM</p> <p>18 A. No, no. It doesn't clarify 10:56:41AM</p> <p>19 factual information that was contained in 10:56:43AM</p> <p>20 the statistical review. So there is no 10:56:44AM</p> <p>21 basis to believe that that would be 10:56:47AM</p> <p>22 relevant information. 10:56:48AM</p> <p>23 Q. Now, did you do some intraday 10:56:49AM</p> <p>24 stock price analysis in this case? 10:56:52AM</p> <p>25 A. I presented intraday stock 10:56:54AM</p> |

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CONFIDENTIAL

| Page 102                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 104                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 price data, correct. 10:56:56AM</p> <p>3 Q. And you did so for February 10:56:56AM</p> <p>4 8th, 2001, correct? 10:56:59AM</p> <p>5 A. That is correct. 10:56:59AM</p> <p>6 Q. You did not present any 10:57:00AM</p> <p>7 intraday stock price analysis for February 10:57:02AM</p> <p>8 7th, 2001? 10:57:03AM</p> <p>9 A. That is correct. 10:57:04AM</p> <p>10 Q. Why didn't you provide any 10:57:05AM</p> <p>11 intraday analysis for February 7th, 2001? 10:57:08AM</p> <p>12 A. Well, for a couple of reasons. 10:57:10AM</p> <p>13 One is I don't think February 7th, 2001 is 10:57:11AM</p> <p>14 a relevant date for determining 10:57:13AM</p> <p>15 materiality and loss causation for reasons 10:57:15AM</p> <p>16 that I make clear in my report. 10:57:17AM</p> <p>17 Secondarily, there were two 10:57:21AM</p> <p>18 pieces of information, at least two pieces 10:57:25AM</p> <p>19 of information on February 7th that 10:57:27AM</p> <p>20 potentially could affect the intraday 10:57:31AM</p> <p>21 stock price movements. 10:57:34AM</p> <p>22 And Dr. Feinstein, who is 10:57:36AM</p> <p>23 affirming that that stock price movement 10:57:38AM</p> <p>24 on February 7th is relevant for 10:57:41AM</p> <p>25 materiality and loss causation, he ignores 10:57:43AM</p>                                                                                                                                              | <p>1 LEHN - CONFIDENTIAL</p> <p>2 overnight period following the release and 10:59:01AM</p> <p>3 at the opening of trading on the next 10:59:03AM</p> <p>4 day." 10:59:06AM</p> <p>5 A. I'm sorry, what page, sir? 10:59:07AM</p> <p>6 Q. It is on the second page of the 10:59:08AM</p> <p>7 article, page 224, the middle of the first 10:59:10AM</p> <p>8 paragraph where they are talking about 10:59:12AM</p> <p>9 elevated returns at the opening on the 10:59:14AM</p> <p>10 next trading day. Do you see that? 10:59:17AM</p> <p>11 A. I do. 10:59:19AM</p> <p>12 Q. If I tell you -- you are not 10:59:20AM</p> <p>13 disputing that at the opening of trading 10:59:22AM</p> <p>14 on February 7th, 2001 that Pharmacia's 10:59:24AM</p> <p>15 share price declined approximately \$1.50; 10:59:26AM</p> <p>16 are you disputing that fact evidentially 10:59:30AM</p> <p>17 in this case? 10:59:33AM</p> <p>18 A. Not as a factual matter. I 10:59:34AM</p> <p>19 haven't done a statistical analysis of 10:59:35AM</p> <p>20 that as to whether that was a 10:59:38AM</p> <p>21 statistically significant decline. 10:59:40AM</p> <p>22 Q. But that decline, a decline at 10:59:41AM</p> <p>23 the opening is of the same type that is 10:59:44AM</p> <p>24 being described on page 224 of the Patell 10:59:46AM</p> <p>25 and Wolfson article, Exhibit 503; is that 10:59:50AM</p>                                                      |
| Page 103                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 105                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 it completely. And that information was 10:57:45AM</p> <p>3 the release of the Vioxx briefing 10:57:47AM</p> <p>4 materials on the morning of February 7th 10:57:49AM</p> <p>5 and then the Advisory Panel's vote, which 10:57:51AM</p> <p>6 was released to the market in the 10:57:54AM</p> <p>7 afternoon of February 7th. 10:57:56AM</p> <p>8 And that's different, there are 10:57:59AM</p> <p>9 two pieces of information there that I 10:58:01AM</p> <p>10 point out in my rebuttal report that 10:58:03AM</p> <p>11 Dr. Feinstein ignores. On February 8th 10:58:05AM</p> <p>12 the most dramatic information was the fact 10:58:12AM</p> <p>13 that the Advisory Panel recommended a 10:58:14AM</p> <p>14 label change for Vioxx, and in the context 10:58:18AM</p> <p>15 of my report I thought that was worth 10:58:22AM</p> <p>16 noting as a likely contributor to the 10:58:24AM</p> <p>17 decline in Pharmacia stock price, which we 10:58:27AM</p> <p>18 both agree was statistically significant 10:58:30AM</p> <p>19 on February 8th. 10:58:32AM</p> <p>20 Q. Looking back at the Patell and 10:58:33AM</p> <p>21 Wolfson article, Plaintiffs' Exhibit 503, 10:58:35AM</p> <p>22 on the second page, page 224, where Patell 10:58:37AM</p> <p>23 and Wolfson write "However, for the 10:58:55AM</p> <p>24 earnings announcements, we also find 10:58:57AM</p> <p>25 significantly elevated returns during the 10:58:59AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 correct? 10:59:53AM</p> <p>3 A. It is not the same type in the 10:59:53AM</p> <p>4 sense that you can't divorce that sentence 10:59:54AM</p> <p>5 from the prior sentences. And it goes 10:59:58AM</p> <p>6 back to what I said before, that Patell 11:00:00AM</p> <p>7 and Wolfson find that the major portion of 11:00:03AM</p> <p>8 the stock price movement occurs within 11:00:05AM</p> <p>9 minutes of the announcement and then they 11:00:06AM</p> <p>10 claim that some of it can spill over 11:00:09AM</p> <p>11 through the open the next day. 11:00:11AM</p> <p>12 But that's quite different from 11:00:13AM</p> <p>13 the so-called delayed reaction where the 11:00:15AM</p> <p>14 information comes out in the morning of 11:00:17AM</p> <p>15 February 6th, there is no reaction, and 11:00:18AM</p> <p>16 then the delayed reaction manifests itself 11:00:21AM</p> <p>17 at a lower open the next day. That's not 11:00:24AM</p> <p>18 what they are saying. 11:00:26AM</p> <p>19 Q. Did you discount as unimportant 11:00:27AM</p> <p>20 the fact that that \$1.50 price decline at 11:00:28AM</p> <p>21 the opening on February 7th corresponded 11:00:34AM</p> <p>22 almost exactly with the same time, timing 11:00:37AM</p> <p>23 wise, as the time that Dr. Goldkind was 11:00:39AM</p> <p>24 making this presentation to the FDA 11:00:42AM</p> <p>25 Advisory Committee? 11:00:44AM</p> |

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CONFIDENTIAL

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| <p style="text-align: right;">Page 106</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Are you representing 11:00:45AM</p> <p>3 that was a change or can you show him 11:00:46AM</p> <p>4 something that establishes that was a 11:00:48AM</p> <p>5 change? 11:00:49AM</p> <p>6 Q. Did you review the transcript 11:00:49AM</p> <p>7 of the -- I will break this down for you 11:00:51AM</p> <p>8 because your counsel has objected. 11:00:54AM</p> <p>9 Did you review the transcript 11:00:55AM</p> <p>10 of the Advisory Committee hearing relating 11:00:57AM</p> <p>11 to Celebrex from February 7th, 2001? 11:01:00AM</p> <p>12 A. I skimmed through it, but I 11:01:03AM</p> <p>13 didn't read it that carefully. 11:01:05AM</p> <p>14 Q. You didn't read it that 11:01:06AM</p> <p>15 carefully? 11:01:07AM</p> <p>16 A. Right. 11:01:08AM</p> <p>17 Q. Did you discount that 11:01:08AM</p> <p>18 transcript as unimportant for some reason, 11:01:10AM</p> <p>19 why you didn't read it more carefully? 11:01:11AM</p> <p>20 A. Well, again, in my opinion, the 11:01:13AM</p> <p>21 relevant date for determining materiality 11:01:14AM</p> <p>22 and loss causation is February 6th, and 11:01:16AM</p> <p>23 after conducting my event study analysis, 11:01:19AM</p> <p>24 I concluded that there was no 11:01:21AM</p> <p>25 statistically significant change in 11:01:23AM</p>                                                                                        | <p style="text-align: right;">Page 108</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 committee might vote that way or early in 11:02:32AM</p> <p>3 the morning is something I haven't 11:02:34AM</p> <p>4 investigated. 11:02:36AM</p> <p>5 Q. Right. But the actual vote at 11:02:36AM</p> <p>6 2:25 could not have caused a stock decline 11:02:38AM</p> <p>7 at, say, approximately between 9:30 and 11:02:41AM</p> <p>8 10:30 a.m.; is that correct? 11:02:43AM</p> <p>9 A. The actual vote could not have. 11:02:45AM</p> <p>10 Anticipation of a vote might have. 11:02:49AM</p> <p>11 Q. But the actual vote could not 11:02:51AM</p> <p>12 have been a factor in the opening \$1.50 11:02:52AM</p> <p>13 decline on February 7th; is that correct, 11:02:55AM</p> <p>14 sir? 11:02:57AM</p> <p>15 MR. WANG: Objection to form. 11:02:59AM</p> <p>16 A. Again, not the actual vote. 11:02:59AM</p> <p>17 But as a theoretical possibility the 11:03:01AM</p> <p>18 anticipation of the vote could have been. 11:03:04AM</p> <p>19 Q. I want to show you what 11:03:11AM</p> <p>20 previously has been marked as Goldkind 11:03:13AM</p> <p>21 Exhibit 3. Can you please take a look at 11:03:15AM</p> <p>22 that document. 11:03:22AM</p> <p>23 And, again, is this the 11:03:23AM</p> <p>24 transcript that you skimmed or reviewed, 11:03:24AM</p> <p>25 not that closely -- I will strike that 11:03:26AM</p> |
| <p style="text-align: right;">Page 107</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Pharmacia's stock price on February 6th. 11:01:25AM</p> <p>3 With respect to critiquing what 11:01:28AM</p> <p>4 Dr. Feinstein has done, whereas I skimmed 11:01:31AM</p> <p>5 through the transcript, I didn't feel it 11:01:34AM</p> <p>6 was necessary to read it with a fine eye 11:01:37AM</p> <p>7 at this stage because I was simply 11:01:43AM</p> <p>8 pointing out things that he did not 11:01:46AM</p> <p>9 consider in his analysis, and he's the one 11:01:47AM</p> <p>10 who thinks that February 7th and February 11:01:50AM</p> <p>11 8th are relevant dates in this matter. 11:01:52AM</p> <p>12 Q. And you do point out an article 11:01:54AM</p> <p>13 that references the Pharmacia Advisory 11:01:56AM</p> <p>14 Committee's vote at 2:25 p.m.; is that 11:02:00AM</p> <p>15 correct? 11:02:04AM</p> <p>16 A. That is correct. 11:02:04AM</p> <p>17 Q. And you would agree with me 11:02:05AM</p> <p>18 just as a matter of reason and logic that 11:02:06AM</p> <p>19 the vote that occurred at 2:25 p.m. could 11:02:09AM</p> <p>20 not have caused any stock decline at the 11:02:12AM</p> <p>21 open on February 7th because it was 11:02:14AM</p> <p>22 subsequent in time? 11:02:17AM</p> <p>23 A. That particular information 11:02:23AM</p> <p>24 release could not have, but whether or not 11:02:25AM</p> <p>25 there was any basis for believing that the 11:02:29AM</p> | <p style="text-align: right;">Page 109</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 question. 11:03:29AM</p> <p>3 Is this the transcript from 11:03:29AM</p> <p>4 February 7th, 2001 that you have 11:03:30AM</p> <p>5 previously reviewed in some form? 11:03:32AM</p> <p>6 A. That is correct. 11:03:33AM</p> <p>7 Q. And specifically I would turn 11:03:34AM</p> <p>8 your attention to -- well, the first page, 11:03:37AM</p> <p>9 it says that it is a transcript and it 11:03:45AM</p> <p>10 says that this Advisory Committee hearing 11:03:47AM</p> <p>11 started at 8 a.m.; is that correct? 11:03:49AM</p> <p>12 A. That's correct. 11:03:52AM</p> <p>13 Q. And it was taking place in 11:03:52AM</p> <p>14 Gaithersburg, Maryland; is that correct? 11:03:55AM</p> <p>15 A. That's correct. 11:03:57AM</p> <p>16 Q. And that would be on the east 11:03:58AM</p> <p>17 coast of the United States? 11:03:59AM</p> <p>18 A. That's right. 11:04:00AM</p> <p>19 Q. In the eastern time zone? 11:04:01AM</p> <p>20 A. That's right. 11:04:03AM</p> <p>21 Q. If you turn to page 96 of the 11:04:04AM</p> <p>22 transcript, that indicates that 11:04:07AM</p> <p>23 Dr. Lawrence Goldkind's presentation began 11:04:10AM</p> <p>24 on page, at least transcript page 96, 11:04:14AM</p> <p>25 there is not a corresponding time; is that 11:04:16AM</p>                                                     |

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| <p style="text-align: right;">Page 110</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 correct? 11:04:20AM</p> <p>3 A. Again, it says FDA 11:04:20AM</p> <p>4 Presentation, Lawrence Goldkind. So I 11:04:24AM</p> <p>5 will accept your assumption this is the 11:04:27AM</p> <p>6 beginning of his presentation. 11:04:30AM</p> <p>7 Q. If you turn to page 103 -- or, 11:04:31AM</p> <p>8 actually, at page 104, at line 9, 11:04:49AM</p> <p>9 Dr. Goldkind is quoted in the transcript 11:04:53AM</p> <p>10 as saying "Finally, in the analysis of 11:04:56AM</p> <p>11 aspirin users, no difference between 11:04:58AM</p> <p>12 Celebrex and diclofenac were shown." Is 11:05:03AM</p> <p>13 that accurate? 11:05:03AM</p> <p>14 A. That's correct. 11:05:07AM</p> <p>15 Q. And then if you turn to the 11:05:07AM</p> <p>16 next page, page 105 of the transcript 11:05:08AM</p> <p>17 starting at line 7, Dr. Goldkind again, 11:05:09AM</p> <p>18 after -- it appears he is showing slides 11:05:12AM</p> <p>19 -- and at line 7 he is quoted as saying 11:05:14AM</p> <p>20 pursuant to the transcript "There was no 11:05:17AM</p> <p>21 meaningful difference between the 11:05:19AM</p> <p>22 diclofenac and Celebrex group with a very 11:05:20AM</p> <p>23 strong trend in favor of Celebrex compared 11:05:24AM</p> <p>24 to ibuprofen. Once again, this is a 11:05:26AM</p> <p>25 nominal p-value for analysis that was not 11:05:30AM</p> | <p style="text-align: right;">Page 112</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Is it accurate that you can't 11:06:19AM</p> <p>3 point to a single analyst report or news 11:06:21AM</p> <p>4 article that predates Dr. Goldkind's 11:06:23AM</p> <p>5 statements on the morning of the 7th that 11:06:26AM</p> <p>6 publicly stated what you were able to 11:06:29AM</p> <p>7 ascertain; is that correct, sir? 11:06:31AM</p> <p>8 MR. WANG: Objection to form. 11:06:32AM</p> <p>9 A. I don't recall an analyst 11:06:33AM</p> <p>10 report that stated that, sir. But I think 11:06:34AM</p> <p>11 it is absolutely ludicrous to think that 11:06:36AM</p> <p>12 analysts that cover Pharmacia and receive 11:06:40AM</p> <p>13 that information would have any difficulty 11:06:41AM</p> <p>14 understanding that from the first several 11:06:45AM</p> <p>15 pages of the statistical review. 11:06:46AM</p> <p>16 Q. But, again, just to clarify the 11:06:49AM</p> <p>17 record, you are unable to point to a 11:06:51AM</p> <p>18 particular analyst report that indicates 11:06:54AM</p> <p>19 that an analyst had, in a written form, 11:06:59AM</p> <p>20 publicly disseminated that view; is that 11:07:02AM</p> <p>21 correct, sir? 11:07:04AM</p> <p>22 MR. WANG: Objection to form. 11:07:06AM</p> <p>23 A. As I stated before, I'm not 11:07:07AM</p> <p>24 aware of any such analyst report. But, 11:07:08AM</p> <p>25 again, I think it is ludicrous to think 11:07:10AM</p>                    |
| <p style="text-align: right;">Page 111</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 prespecified." 11:05:33AM</p> <p>3 Do you see that? 11:05:35AM</p> <p>4 A. I do. 11:05:35AM</p> <p>5 Q. Again, did you discount those 11:05:35AM</p> <p>6 two statements in any way as not being 11:05:37AM</p> <p>7 important to your analysis of loss 11:05:39AM</p> <p>8 causation and materiality in this case? 11:05:40AM</p> <p>9 MR. WANG: Objection to form. 11:05:43AM</p> <p>10 A. Well, I didn't really focus on 11:05:44AM</p> <p>11 his statements in the transcript when I 11:05:45AM</p> <p>12 did skim it. 11:05:47AM</p> <p>13 But as I read it now it is 11:05:48AM</p> <p>14 totally irrelevant because that 11:05:49AM</p> <p>15 information was contained in the 11:05:51AM</p> <p>16 statistical reviewer's briefing document 11:05:52AM</p> <p>17 released on the morning of February 6th. 11:05:54AM</p> <p>18 I'm not a medical person, but I 11:05:57AM</p> <p>19 do understand statistics. And when I look 11:05:58AM</p> <p>20 through the tables, I was able to 11:06:01AM</p> <p>21 ascertain what Dr. Goldkind is saying 11:06:03AM</p> <p>22 there about the comparison of diclofenac 11:06:05AM</p> <p>23 and Celebrex. And it is contained in the 11:06:12AM</p> <p>24 tables in the first several pages of the 11:06:16AM</p> <p>25 statistical review. 11:06:19AM</p>                                                             | <p style="text-align: right;">Page 113</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 that they would not have been aware of 11:07:11AM</p> <p>3 this, and the fact that they didn't write 11:07:13AM</p> <p>4 about it also is consistent with the fact 11:07:15AM</p> <p>5 that they didn't think it was particularly 11:07:16AM</p> <p>6 important. 11:07:18AM</p> <p>7 Q. But they did write about it the 11:07:18AM</p> <p>8 afternoon of the February 7th and the 11:07:21AM</p> <p>9 morning of February 8th; is that correct? 11:07:23AM</p> <p>10 MR. WANG: Objection to form. 11:07:24AM</p> <p>11 Misstates the evidence. 11:07:25AM</p> <p>12 A. I would have to go back and see 11:07:26AM</p> <p>13 specifically what they say about 11:07:28AM</p> <p>14 Dr. Goldkind's presentation, or this 11:07:31AM</p> <p>15 particular point. But when they did write 11:07:33AM</p> <p>16 about it, it was in the context of new 11:07:35AM</p> <p>17 information, namely the Advisory Panel 11:07:36AM</p> <p>18 decision and the events of February 8th. 11:07:40AM</p> <p>19 Q. But analysts do comment on what 11:07:42AM</p> <p>20 you've described as being ascertainable 11:07:46AM</p> <p>21 information after the close of trading on 11:07:48AM</p> <p>22 February 7th, and during the morning of 11:07:50AM</p> <p>23 February 8th, there are analyst reports 11:07:52AM</p> <p>24 published regarding that information that 11:07:55AM</p> <p>25 you said was ascertainable from the data 11:07:56AM</p> |

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## CONFIDENTIAL

| Page 114                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 116                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 on the 6th; is that correct, sir? 11:07:58AM</p> <p>3 MR. WANG: Objection to form. 11:08:00AM</p> <p>4 Assumes facts not in evidence still. 11:08:01AM</p> <p>5 A. You would have to direct me to 11:08:03AM</p> <p>6 the specific statements that you have in 11:08:05AM</p> <p>7 mind when you say that. I don't recall 11:08:07AM</p> <p>8 any analyst on February 7th or February 11:08:09AM</p> <p>9 8th directly addressing the alleged 11:08:11AM</p> <p>10 corrective disclosures. 11:08:15AM</p> <p>11 Q. I want to show you what I'm 11:09:01AM</p> <p>12 marking as Plaintiffs' Exhibit 507. 11:09:03AM</p> <p>13 (Plaintiffs' Exhibit 507 marked 11:09:05AM</p> <p>14 for identification.) 11:09:07AM</p> <p>15 Q. Could you please take a look at 11:09:09AM</p> <p>16 Plaintiffs' Exhibit 507. For the record, 11:09:11AM</p> <p>17 Exhibit 507 bears Bates numbers DEFEX 11:09:15AM</p> <p>18 005589 through 597. And it is a CIBC 11:09:22AM</p> <p>19 World Markets equity research report dated 11:09:28AM</p> <p>20 February 8th, 2001, and it is labeled 11:09:31AM</p> <p>21 "Pharmacia Corporation, CLASS Flunks Out." 11:09:34AM</p> <p>22 Do you see that? 11:09:38AM</p> <p>23 A. I do. 11:09:38AM</p> <p>24 Q. And have you reviewed this 11:09:38AM</p> <p>25 analyst report as part of formulating your 11:09:40AM</p>          | <p>1 LEHN - CONFIDENTIAL</p> <p>2 2001; is that correct? 11:10:34AM</p> <p>3 MR. WANG: Objection to form. 11:10:37AM</p> <p>4 Assumes facts not in evidence. 11:10:38AM</p> <p>5 A. I would have to review the 11:10:42AM</p> <p>6 report in order to reach that judgment. 11:10:44AM</p> <p>7 But it may or may not be. 11:10:45AM</p> <p>8 Q. And looking at Exhibit 11 to 11:10:47AM</p> <p>9 your report, which I think is the second 11:10:48AM</p> <p>10 to last page of the exhibits of your 11:10:50AM</p> <p>11 initial report which we have marked as 11:10:53AM</p> <p>12 Exhibit 500, and this is summarizing some 11:10:55AM</p> <p>13 of your intraday analysis; is that 11:11:06AM</p> <p>14 correct? 11:11:08AM</p> <p>15 A. "This" meaning the exhibit? 11:11:08AM</p> <p>16 Q. Exhibit 11, yes. 11:11:09AM</p> <p>17 A. Exhibit 11, correct. 11:11:11AM</p> <p>18 Q. And according to your intraday 11:11:12AM</p> <p>19 analysis in this table in Exhibit 11 there 11:11:14AM</p> <p>20 is approximately a \$2 stock drop at the 11:11:17AM</p> <p>21 opening; is that correct? 11:11:19AM</p> <p>22 MR. WANG: Objection to form. 11:11:21AM</p> <p>23 A. I'm not sure where you are 11:11:26AM</p> <p>24 reading. The previous close had been 11:11:28AM</p> <p>25 \$56.13 and it opened at \$55.90. 11:11:31AM</p>                                                       |
| Page 115                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 117                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 opinions in this case? 11:09:43AM</p> <p>3 A. I have. 11:09:44AM</p> <p>4 Q. And did you discount it as 11:09:44AM</p> <p>5 unimportant for some reason? 11:09:46AM</p> <p>6 MR. WANG: Objection to form. 11:09:47AM</p> <p>7 A. It is unimportant, in my 11:09:48AM</p> <p>8 opinion, for purposes of my opinion 11:09:50AM</p> <p>9 regarding materiality and loss causation. 11:09:52AM</p> <p>10 Q. And can you explain why it is 11:09:54AM</p> <p>11 unimportant to you, sir? 11:09:55AM</p> <p>12 A. Well, again, if one assumes, as 11:09:56AM</p> <p>13 Dr. Feinstein has assumed, that the market 11:09:58AM</p> <p>14 for Pharmacia stock is efficient, an 11:10:00AM</p> <p>15 analyst report by CIBC on February 8th 11:10:06AM</p> <p>16 that contains no new information about the 11:10:09AM</p> <p>17 alleged corrective disclosures is 11:10:11AM</p> <p>18 irrelevant because it occurs two days 11:10:14AM</p> <p>19 after the alleged corrective disclosures 11:10:16AM</p> <p>20 were publicly disseminated. 11:10:18AM</p> <p>21 Q. But this report is certainly 11:10:20AM</p> <p>22 discussing and is describing information 11:10:22AM</p> <p>23 that was ascertainable from posting the 11:10:24AM</p> <p>24 web postings that are attached to Exhibit 11:10:29AM</p> <p>25 506 that were posted on February 6th, 11:10:31AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And by the time you get to 11:11:34AM</p> <p>3 10:35 a.m. or approximately the first hour 11:11:36AM</p> <p>4 of trading, the stock is down at about \$54 11:11:38AM</p> <p>5 a share; is that correct? 11:11:41AM</p> <p>6 A. Approximately, that's correct. 11:11:42AM</p> <p>7 Q. So from opening to 10:30, 11:11:43AM</p> <p>8 specifically the first hour of trading, 11:11:46AM</p> <p>9 the stock declined approximately \$2 per 11:11:47AM</p> <p>10 share? 11:11:49AM</p> <p>11 A. That's correct. Then it 11:11:49AM</p> <p>12 increased subsequent to that. 11:11:50AM</p> <p>13 Q. And you are not offering an 11:11:52AM</p> <p>14 opinion in this case that the Merck 11:11:54AM</p> <p>15 Advisory Committee vote or recommendation 11:11:55AM</p> <p>16 that's reported in the afternoon, that 11:12:00AM</p> <p>17 that actual occurrence caused this \$2 11:12:03AM</p> <p>18 stock decline in the morning of February 11:12:06AM</p> <p>19 8th; is that correct? 11:12:09AM</p> <p>20 A. I'm not prepared to offer an 11:12:11AM</p> <p>21 opinion as to what might have caused that 11:12:13AM</p> <p>22 decline as I sit here today. 11:12:16AM</p> <p>23 Q. But certainly an event that 11:12:17AM</p> <p>24 occurred either at, depending on whether 11:12:19AM</p> <p>25 you are right or Dr. Feinstein is right, 11:12:23AM</p> |

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CONFIDENTIAL

| Page 118                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 120                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 an event that occurred somewhere between 1 11:12:26AM</p> <p>3 and 3 o'clock in the afternoon could not 11:12:29AM</p> <p>4 have been the cause of a stock decline 11:12:31AM</p> <p>5 that occurred between 9:30 and 10:30 a.m. 11:12:33AM</p> <p>6 that morning; is that correct? Because it 11:12:37AM</p> <p>7 hadn't occurred yet, sir; is that right? 11:12:40AM</p> <p>8 A. The event itself. But, again, 11:12:42AM</p> <p>9 there can be anticipation about an event 11:12:45AM</p> <p>10 that potentially could. 11:12:47AM</p> <p>11 Q. But the event itself could not 11:12:49AM</p> <p>12 have caused that \$2 stock decline; is that 11:12:50AM</p> <p>13 right? 11:12:53AM</p> <p>14 A. By definition, that's correct. 11:12:53AM</p> <p>15 Q. And that \$2 stock decline in 11:12:56AM</p> <p>16 the morning could have been caused by the 11:12:59AM</p> <p>17 issuance of analyst reports after the 11:13:02AM</p> <p>18 close on February 7th and/or during the 11:13:04AM</p> <p>19 morning of February 8th, that's a 11:13:10AM</p> <p>20 possibility theoretically because of the 11:13:12AM</p> <p>21 timing; is that correct, sir? 11:13:14AM</p> <p>22 A. Theoretically. But, again, the 11:13:17AM</p> <p>23 relevant question is whether there was new 11:13:20AM</p> <p>24 information about the alleged corrective 11:13:23AM</p> <p>25 disclosures in the analyst reports. 11:13:25AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I have never done a study of 11:14:15AM</p> <p>3 that. I mean, it is a fairly colorful 11:14:16AM</p> <p>4 title, but I have seen other colorful 11:14:22AM</p> <p>5 titles, too. 11:14:24AM</p> <p>6 Q. You would agree with me it is a 11:14:25AM</p> <p>7 colorful title, correct? 11:14:26AM</p> <p>8 A. Correct. 11:14:28AM</p> <p>9 Q. And probably out of the 11:14:28AM</p> <p>10 ordinary with respect to looking at 11:14:29AM</p> <p>11 analyst reports generally as how they 11:14:32AM</p> <p>12 refer to company information? 11:14:36AM</p> <p>13 A. I've seen other in the past, 11:14:38AM</p> <p>14 other colorful titles. 11:14:40AM</p> <p>15 Q. But you've also seen a lot of 11:14:41AM</p> <p>16 them that are sort of not colorful, right? 11:14:43AM</p> <p>17 A. That's correct. 11:14:45AM</p> <p>18 Q. And you have seen a lot more 11:14:46AM</p> <p>19 non-colorful than colorful; is that fair 11:14:48AM</p> <p>20 to say? 11:14:51AM</p> <p>21 A. I've never done a tally, so... 11:14:52AM</p> <p>22 Q. Just as a guy, a professor of 11:14:54AM</p> <p>23 finance who has looked at a lot of analyst 11:14:56AM</p> <p>24 reports in your time, would you say that 11:14:58AM</p> <p>25 this is unusually colorful? 11:15:00AM</p>                                                                                                          |
| Page 119                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 121                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Analyst reports can affect company stock 11:13:30AM</p> <p>3 prices. 11:13:32AM</p> <p>4 But, again, in this case we 11:13:33AM</p> <p>5 have the alleged corrective disclosures 11:13:35AM</p> <p>6 made on February 6th. You know, 11:13:37AM</p> <p>7 Dr. Feinstein I think agrees with me that 11:13:40AM</p> <p>8 there were no additional corrective 11:13:42AM</p> <p>9 disclosures after February 6th, in which 11:13:44AM</p> <p>10 case an analysis of analyst reports on 11:13:47AM</p> <p>11 February 8th would be irrelevant for 11:13:49AM</p> <p>12 establishing loss causation in this 11:13:52AM</p> <p>13 matter. 11:13:54AM</p> <p>14 Q. Now, Exhibit 507 is entitled 11:13:54AM</p> <p>15 "CLASS Flunks Out," correct? 11:13:56AM</p> <p>16 MR. WANG: Objection to form. 11:14:00AM</p> <p>17 A. That is the title. 11:14:00AM</p> <p>18 Q. In your experience, are 11:14:01AM</p> <p>19 analysts generally more guarded in their 11:14:02AM</p> <p>20 language given that they have a 11:14:05AM</p> <p>21 relationship they are cultivating with 11:14:08AM</p> <p>22 management of a company that they follow 11:14:10AM</p> <p>23 because they depend on them for lines of 11:14:10AM</p> <p>24 communication? 11:14:14AM</p> <p>25 MR. WANG: Objection to form. 11:14:14AM</p>                                                                                                                 | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Again, I've never really 11:15:04AM</p> <p>3 focused on the titles of analyst reports 11:15:06AM</p> <p>4 and I don't like to answer unless I have 11:15:09AM</p> <p>5 an empirical basis, so, you know, I'm 11:15:11AM</p> <p>6 not prepared to say that as I sit here. 11:15:17AM</p> <p>7 Q. And "flunks out" is definitely 11:15:19AM</p> <p>8 a negative connotation as referring to the 11:15:21AM</p> <p>9 CLASS trial; is that correct? 11:15:23AM</p> <p>10 A. It certainly seems to be -- or 11:15:24AM</p> <p>11 seems to have negative connotation. 11:15:30AM</p> <p>12 Q. Now, I want to show you what I 11:15:39AM</p> <p>13 have previously marked -- or what has 11:15:41AM</p> <p>14 previously been marked in this case as 11:15:42AM</p> <p>15 Plaintiffs' Exhibit 314. Could you please 11:15:44AM</p> <p>16 take a look at that document. 11:15:51AM</p> <p>17 And, for the record, 11:15:55AM</p> <p>18 Plaintiffs' Exhibit 314 appears to be a 11:15:56AM</p> <p>19 press release, and it's entitled 11:16:00AM</p> <p>20 "Pharmacia/Pfizer, Inc. Statement on the 11:16:06AM</p> <p>21 FDA Arthritis Advisory Committee Meeting, 11:16:10AM</p> <p>22 February 7th, 2001, Gaithersburg, 11:16:13AM</p> <p>23 Maryland." 11:16:19AM</p> <p>24 Does this appear to be a press 11:16:19AM</p> <p>25 release being issued by Pharmacia and 11:16:21AM</p> |

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| Page 122                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 124                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Pfizer; is that correct? 11:16:23AM</p> <p>3 A. It appears to be, yes. 11:16:24AM</p> <p>4 Q. Do you know why Pharmacia and 11:16:24AM</p> <p>5 Pfizer would be jointly issuing a press 11:16:27AM</p> <p>6 release? 11:16:29AM</p> <p>7 A. Well, I know Pfizer co-marketed 11:16:29AM</p> <p>8 Celebrex with Pharmacia and then 11:16:32AM</p> <p>9 ultimately Pfizer acquired Pharmacia. 11:16:34AM</p> <p>10 Q. So since they were 11:16:36AM</p> <p>11 co-marketing, that may explain why they 11:16:38AM</p> <p>12 are jointly issuing the press release? 11:16:40AM</p> <p>13 MR. WANG: Objection to form. 11:16:42AM</p> <p>14 Calls for speculation. 11:16:43AM</p> <p>15 A. I would only be speculating, 11:16:44AM</p> <p>16 but it seems like a reasonable inference. 11:16:46AM</p> <p>17 Q. And the press release is dated 11:16:47AM</p> <p>18 February 7th, 2001? 11:16:49AM</p> <p>19 A. That's correct. 11:16:50AM</p> <p>20 Q. And if you look at the last 11:16:50AM</p> <p>21 sentence in the second paragraph, it says 11:16:52AM</p> <p>22 "This was an extremely rigorous and 11:16:54AM</p> <p>23 complex trial which made it difficult for 11:16:56AM</p> <p>24 the committee to analyze." Do you see 11:16:58AM</p> <p>25 that? 11:17:00AM</p>                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 irrelevant for making that judgment. 11:17:41AM</p> <p>3 Q. And I just want to make sure I 11:17:43AM</p> <p>4 understand your opinion. 11:17:45AM</p> <p>5 Is your opinion that you are 11:17:46AM</p> <p>6 offering today, and if questioned about at 11:17:48AM</p> <p>7 trial, will be offering it then, that the 11:17:51AM</p> <p>8 complexity of information is not a factor 11:17:53AM</p> <p>9 to be considered in an efficient market 11:17:56AM</p> <p>10 for determining how rapidly the market 11:17:58AM</p> <p>11 will digest the information? 11:18:01AM</p> <p>12 MR. WANG: Objection to form. 11:18:03AM</p> <p>13 A. Can you repeat the question? 11:18:04AM</p> <p>14 MR. SAHAM: Could you read it 11:18:11AM</p> <p>15 back to him. 11:18:12AM</p> <p>16 (The record was read.) 11:18:33AM</p> <p>17 A. Again, it is my opinion that if 11:18:35AM</p> <p>18 one has opined that the market for 11:18:37AM</p> <p>19 security is efficient, using the commonly 11:18:40AM</p> <p>20 accepted definition of market efficiency 11:18:43AM</p> <p>21 in the academic arena, that means that all 11:18:46AM</p> <p>22 public information is reflected in the 11:18:49AM</p> <p>23 security price and new information is 11:18:50AM</p> <p>24 rapidly reflected in the security price. 11:18:53AM</p> <p>25 And the complexity of such 11:18:57AM</p> |
| Page 123                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 125                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I do. 11:17:00AM</p> <p>3 Q. Did you discount that statement 11:17:01AM</p> <p>4 by the company in any way in formulating 11:17:02AM</p> <p>5 your opinions? 11:17:04AM</p> <p>6 MR. WANG: Objection to form. 11:17:05AM</p> <p>7 A. That statement would be 11:17:06AM</p> <p>8 irrelevant for my opinions. It has no 11:17:08AM</p> <p>9 bearing on issues relating to materiality 11:17:12AM</p> <p>10 and loss causation. 11:17:15AM</p> <p>11 Q. Is it your opinion that 11:17:16AM</p> <p>12 complexity of information is not a factor 11:17:18AM</p> <p>13 to be considered in determining how 11:17:18AM</p> <p>14 quickly the market will digest 11:17:22AM</p> <p>15 information? 11:17:23AM</p> <p>16 MR. WANG: Objection to form. 11:17:24AM</p> <p>17 Asked and answered. 11:17:25AM</p> <p>18 A. Not as a general matter. But 11:17:25AM</p> <p>19 if one has determined that the market for 11:17:27AM</p> <p>20 security is efficient by definition, that 11:17:29AM</p> <p>21 means that all public information is 11:17:32AM</p> <p>22 reflected in the security price and new 11:17:34AM</p> <p>23 information is rapidly reflected in the 11:17:35AM</p> <p>24 security price. And the alleged 11:17:37AM</p> <p>25 complexity of the information would be 11:17:40AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 information is then irrelevant for 11:18:59AM</p> <p>3 determining whether it would take one 11:19:01AM</p> <p>4 trading day or more trading days for that 11:19:03AM</p> <p>5 information to be reflected in the 11:19:06AM</p> <p>6 security price. If it takes more than one 11:19:08AM</p> <p>7 trading day, by definition you don't have 11:19:10AM</p> <p>8 an efficient market. 11:19:12AM</p> <p>9 Q. Now, if conflicting information 11:19:13AM</p> <p>10 is issued at the exact same time, 11:19:16AM</p> <p>11 information that conflicts with itself, 11:19:21AM</p> <p>12 could that cause the market to take, in an 11:19:23AM</p> <p>13 efficient market, to take longer time to 11:19:26AM</p> <p>14 adjust? 11:19:29AM</p> <p>15 MR. WANG: Objection to form. 11:19:30AM</p> <p>16 Vague and ambiguous. And incomplete 11:19:31AM</p> <p>17 hypothetical. 11:19:34AM</p> <p>18 A. And I don't know what you mean 11:19:35AM</p> <p>19 by "conflicting information" in the 11:19:37AM</p> <p>20 context of the alleged corrective 11:19:39AM</p> <p>21 disclosures. 11:19:40AM</p> <p>22 Q. Well, let's break it down. 11:19:41AM</p> <p>23 If there is two pieces of 11:19:42AM</p> <p>24 information that come out at the exact 11:19:44AM</p> <p>25 same time that say the exact opposite 11:19:48AM</p>                                           |

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| Page 126                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 128                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 thing, could that cause the market to take 11:19:50AM</p> <p>3 longer to fully correct and adjust to the 11:19:52AM</p> <p>4 new information that was simultaneously 11:19:55AM</p> <p>5 released? 11:19:57AM</p> <p>6 MR. WANG: Objection to form. 11:19:58AM</p> <p>7 Incomplete hypothetical. 11:20:00AM</p> <p>8 A. The market will react quickly 11:20:01AM</p> <p>9 to both pieces of information as they are 11:20:04AM</p> <p>10 released. And if down the road new 11:20:06AM</p> <p>11 information emerges that indicates that 11:20:10AM</p> <p>12 that party was wrong and this party is 11:20:14AM</p> <p>13 right, then there would be a subsequent 11:20:16AM</p> <p>14 event that perhaps would resolve that 11:20:19AM</p> <p>15 conflict. 11:20:23AM</p> <p>16 But there are additional 11:20:24AM</p> <p>17 questions one has to ask. One is whether 11:20:25AM</p> <p>18 both pieces of conflicting information are 11:20:29AM</p> <p>19 new or is one piece of conflicting 11:20:33AM</p> <p>20 information stuff that had previously been 11:20:37AM</p> <p>21 said, in which case the only incremental 11:20:40AM</p> <p>22 information is the new information that 11:20:42AM</p> <p>23 takes an opposing position. 11:20:45AM</p> <p>24 And this is all just a 11:20:47AM</p> <p>25 theoretical discussion at this point. It 11:20:48AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 be considered for the CLASS trial? 11:21:33AM</p> <p>3 A. Yes. And there can be 11:21:34AM</p> <p>4 legitimate methodological debate about the 11:21:36AM</p> <p>5 appropriateness of the length of a trial, 11:21:39AM</p> <p>6 and we have these debates in the finance 11:21:41AM</p> <p>7 arena as well in the academic literature 11:21:43AM</p> <p>8 about how do you construct your sample, 11:21:46AM</p> <p>9 over what time period. There can be 11:21:48AM</p> <p>10 reasonable debate among people as to what 11:21:50AM</p> <p>11 to do. 11:21:52AM</p> <p>12 With respect to the alleged 11:21:53AM</p> <p>13 corrective disclosures, they are all laid 11:21:54AM</p> <p>14 out in the statistical reviewer's briefing 11:21:58AM</p> <p>15 document, and all this complexity 11:22:01AM</p> <p>16 discussion is a red herring with respect 11:22:04AM</p> <p>17 to those corrective disclosures. They 11:22:07AM</p> <p>18 weren't complex. They were very readily 11:22:10AM</p> <p>19 ascertainable in the tables. 11:22:13AM</p> <p>20 Q. You don't consider 11:22:14AM</p> <p>21 Dr. Goldkind's presentation on the morning 11:22:15AM</p> <p>22 of February 7th a clarification as to 11:22:16AM</p> <p>23 whether or not the company's view that the 11:22:19AM</p> <p>24 six-month data was more appropriate was 11:22:22AM</p> <p>25 rejected on February 7th by the FDA at the 11:22:25AM</p> |
| Page 127                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 129                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 has no relevance to the particular matter 11:20:50AM</p> <p>3 at hand. 11:20:52AM</p> <p>4 Q. Did you consider the company's 11:20:53AM</p> <p>5 briefing document that was released on 11:20:54AM</p> <p>6 February 6th, 2001 prior to formulating 11:20:56AM</p> <p>7 your opinions in this matter? 11:20:59AM</p> <p>8 A. I did, yes. 11:21:00AM</p> <p>9 Q. And did you discount the 11:21:01AM</p> <p>10 information contained in the company's 11:21:02AM</p> <p>11 briefing document as unimportant -- 11:21:04AM</p> <p>12 MR. WANG: Objection to form. 11:21:06AM</p> <p>13 Q. -- to your opinions? 11:21:07AM</p> <p>14 MR. WANG: Objection to form. 11:21:10AM</p> <p>15 A. Again, there was nothing in the 11:21:11AM</p> <p>16 briefing documents that would have called 11:21:12AM</p> <p>17 into question the information which served 11:21:15AM</p> <p>18 as the alleged corrective disclosures, all 11:21:17AM</p> <p>19 of which are contained in the early pages 11:21:21AM</p> <p>20 of the statistical reviewer's briefing 11:21:22AM</p> <p>21 document. 11:21:24AM</p> <p>22 Q. Do you understand that in the 11:21:25AM</p> <p>23 briefing document the company argued that 11:21:26AM</p> <p>24 as a result of informative censoring, that 11:21:28AM</p> <p>25 the six-month data was the valid data to 11:21:31AM</p>                    | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Advisory Committee hearing? 11:22:29AM</p> <p>3 MR. WANG: Objection to form. 11:22:31AM</p> <p>4 A. Nothing that I saw in what you 11:22:32AM</p> <p>5 presented from Dr. Goldkind's presentation 11:22:34AM</p> <p>6 would have corrected the alleged 11:22:36AM</p> <p>7 corrective disclosures. That information 11:22:39AM</p> <p>8 was intact. It was released on the 11:22:41AM</p> <p>9 morning of February 6th and it is not as 11:22:45AM</p> <p>10 if Dr. Goldkind went back and said "I want 11:22:46AM</p> <p>11 to correct some of the empirical 11:22:49AM</p> <p>12 information contained in those tables." 11:22:52AM</p> <p>13 So in that sense, it was not 11:22:55AM</p> <p>14 clarifying with respect to the alleged 11:22:57AM</p> <p>15 corrective disclosures. 11:22:59AM</p> <p>16 Q. Do you know whether the company 11:23:00AM</p> <p>17 persisted in its informative censoring 11:23:02AM</p> <p>18 argument in the presentation of the 11:23:04AM</p> <p>19 six-month data at the hearing on February 11:23:06AM</p> <p>20 7th? 11:23:07AM</p> <p>21 A. I don't recall. But if they 11:23:09AM</p> <p>22 did, that would be irrelevant as well 11:23:11AM</p> <p>23 because it doesn't affect the alleged 11:23:12AM</p> <p>24 corrective disclosures. 11:23:14AM</p> <p>25 Q. What about the fact that the 11:23:15AM</p>                                                                 |

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| Page 130                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 132                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 company did not persist in insisting on 11:23:16AM</p> <p>3 the use of the six-month data on the 11:23:20AM</p> <p>4 morning of February 7th, would that be 11:23:22AM</p> <p>5 considered new information to the market? 11:23:24AM</p> <p>6 A. It would be irrelevant with 11:23:26AM</p> <p>7 respect to alleged corrective disclosures. 11:23:27AM</p> <p>8 All of that information was laid out in 11:23:30AM</p> <p>9 the statistical reviewer's briefing 11:23:31AM</p> <p>10 documents, and as far as I understand none 11:23:33AM</p> <p>11 of that was corrected. 11:23:35AM</p> <p>12 Q. Would you agree that the 11:23:38AM</p> <p>13 publication of an article in a 11:23:42AM</p> <p>14 peer-reviewed format has some impact on 11:23:47AM</p> <p>15 practitioners in that particular field? 11:23:53AM</p> <p>16 A. Well, I'm not sure a lot of 11:23:57AM</p> <p>17 finance peer-reviewed publications have 11:24:02AM</p> <p>18 that much impact, but I presume that 11:24:05AM</p> <p>19 perhaps the rate would be higher in the 11:24:08AM</p> <p>20 medical area. But I don't know, I've 11:24:09AM</p> <p>21 never done a study of that. 11:24:11AM</p> <p>22 Q. And are you offering an opinion 11:24:12AM</p> <p>23 in this case as to when the market became 11:24:14AM</p> <p>24 aware that the editors of JAMA did not 11:24:17AM</p> <p>25 receive the entire data prior to 11:24:22AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 stating it improperly -- as of February 11:25:48AM</p> <p>3 6th, 2001 the market was not aware that 11:25:50AM</p> <p>4 the JAMA editors believed that they were 11:25:56AM</p> <p>5 misled into publishing the six-month data 11:26:00AM</p> <p>6 because they didn't know about the entire 11:26:02AM</p> <p>7 study data? 11:26:04AM</p> <p>8 MR. WANG: Objection to form. 11:26:05AM</p> <p>9 That misstates his prior testimony. 11:26:06AM</p> <p>10 A. Well, you know, as I indicated, 11:26:10AM</p> <p>11 to my knowledge, the first time that the 11:26:14AM</p> <p>12 market became aware of issues related to 11:26:15AM</p> <p>13 the submission to JAMA were in the 11:26:18AM</p> <p>14 Washington Post article of August 5th, 11:26:22AM</p> <p>15 2001. 11:26:24AM</p> <p>16 Q. So therefore they weren't aware 11:26:24AM</p> <p>17 of the information you are discussing in 11:26:26AM</p> <p>18 your answer on February 6th, 2001, 11:26:27AM</p> <p>19 correct, the market? 11:26:29AM</p> <p>20 MR. WANG: Objection to form. 11:26:30AM</p> <p>21 A. I'm not aware of any factual 11:26:31AM</p> <p>22 basis for believing that the market was 11:26:33AM</p> <p>23 aware as of February 2001. But I also am 11:26:36AM</p> <p>24 aware of when you do an event study on 11:26:41AM</p> <p>25 August 5th, 2001 that there was no 11:26:43AM</p> |
| Page 131                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 133                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 publishing the JAMA article regarding the 11:24:24AM</p> <p>3 CLASS trial on September 13th, 2000? 11:24:29AM</p> <p>4 A. I'm sorry, can you repeat that? 11:24:32AM</p> <p>5 Q. Are you offering an opinion as 11:24:33AM</p> <p>6 to when the market became aware that the 11:24:35AM</p> <p>7 editors of the Journal of American Medical 11:24:40AM</p> <p>8 Association were not aware of the fact 11:24:43AM</p> <p>9 that the CLASS trial had data -- well, 11:24:47AM</p> <p>10 strike that question. 11:24:53AM</p> <p>11 MR. SAHAM: Can you actually 11:24:53AM</p> <p>12 read back my prior question, because now I 11:24:54AM</p> <p>13 can't remember it due to my lack of 11:24:57AM</p> <p>14 memory. 11:25:00AM</p> <p>15 (The record was read.) 11:25:20AM</p> <p>16 A. I'm not sure I understand what 11:25:21AM</p> <p>17 you mean by "offering an opinion." I'm 11:25:22AM</p> <p>18 not offering an opinion as to that. 11:25:25AM</p> <p>19 My understanding is that the 11:25:27AM</p> <p>20 Washington Post article that was published 11:25:28AM</p> <p>21 on August 5th, 2001 was the first time 11:25:30AM</p> <p>22 that the market became aware of issues 11:25:35AM</p> <p>23 concerning the submission to JAMA. 11:25:38AM</p> <p>24 Q. So your opinion, then -- and 11:25:41AM</p> <p>25 I'm going to restate it, correct me if I'm 11:25:44AM</p>                                     | <p>1 LEHN - CONFIDENTIAL</p> <p>2 statistically significant change in 11:26:46AM</p> <p>3 Pharmacia's stock price. 11:26:48AM</p> <p>4 Q. Now, is it your testimony and 11:26:50AM</p> <p>5 opinion that the complexity of a 11:26:51AM</p> <p>6 corrective disclosure is irrelevant to 11:26:54AM</p> <p>7 determining how rapidly new information is 11:26:56AM</p> <p>8 incorporated into a company's stock price? 11:26:59AM</p> <p>9 MR. WANG: Objection to form. 11:27:01AM</p> <p>10 Asked and answered. 11:27:02AM</p> <p>11 MR. SAHAM: That question came 11:27:05AM</p> <p>12 from a note, so it cannot be 11:27:06AM</p> <p>13 objectionable. But could you repeat the 11:27:09AM</p> <p>14 question for me, please. 11:27:12AM</p> <p>15 (The record was read.) 11:27:26AM</p> <p>16 A. Well, again, as a general 11:27:28AM</p> <p>17 matter, I don't want to say it is 11:27:30AM</p> <p>18 irrelevant. But if one has opined that 11:27:31AM</p> <p>19 the market for a security is efficient, 11:27:34AM</p> <p>20 then regardless of the complexity of the 11:27:37AM</p> <p>21 information, that information will be 11:27:39AM</p> <p>22 absorbed into a company's stock price and 11:27:42AM</p> <p>23 it will be absorbed quickly. 11:27:44AM</p> <p>24 Now, is quickly a matter of ten 11:27:47AM</p> <p>25 minutes or a matter of a couple of hours? 11:27:49AM</p>              |

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| <p style="text-align: right;">Page 134</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 I'm not here to tell you the bright line. 11:27:51AM</p> <p>3 But if the market for the security is 11:27:54AM</p> <p>4 efficient, it certainly will be within one 11:27:56AM</p> <p>5 trading day. 11:27:58AM</p> <p>6 Q. I'm going to show you what has 11:28:19AM</p> <p>7 previously been marked as Plaintiffs' 11:28:22AM</p> <p>8 Exhibit 70. 11:28:23AM</p> <p>9 Could you please take a look at 11:28:29AM</p> <p>10 that document, and please feel free to 11:28:30AM</p> <p>11 review it, but I will represent to you 11:28:32AM</p> <p>12 that this is the CLASS Advisory Committee 11:28:34AM</p> <p>13 briefing document that was posted on the 11:28:36AM</p> <p>14 FDA website simultaneously with the three 11:28:38AM</p> <p>15 reports in Exhibit 506 on February 6th -- 11:28:41AM</p> <p>16 or on or about -- or in early February 11:28:46AM</p> <p>17 2001. 11:28:49AM</p> <p>18 Do you recognize this document? 11:28:51AM</p> <p>19 A. I do. 11:28:52AM</p> <p>20 Q. And would you agree that this 11:28:53AM</p> <p>21 is the company briefing document that was 11:28:55AM</p> <p>22 posted along with the three FDA reviewer 11:28:57AM</p> <p>23 reports? 11:29:01AM</p> <p>24 A. Correct. 11:29:01AM</p> <p>25 Q. And does this document have any 11:29:02AM</p>                                           | <p style="text-align: right;">Page 136</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 I'm not aware of anything in 11:30:07AM</p> <p>3 the briefing documents that alters the 11:30:08AM</p> <p>4 information that was released with respect 11:30:12AM</p> <p>5 to the alleged corrective disclosures on 11:30:13AM</p> <p>6 the morning of February 6th. 11:30:16AM</p> <p>7 Q. Are you aware of any 11:30:17AM</p> <p>8 articulation of the informative censoring 11:30:19AM</p> <p>9 hypothesis or depletion of susceptibles 11:30:22AM</p> <p>10 hypothesis prior to February 6th, 2001 11:30:27AM</p> <p>11 publicly? 11:30:30AM</p> <p>12 A. I don't recall discussions of 11:30:34AM</p> <p>13 that prior to February 6th in the public 11:30:35AM</p> <p>14 domain, no. 11:30:38AM</p> <p>15 Q. Could the articulation of an 11:30:39AM</p> <p>16 explanation regarding informative 11:30:40AM</p> <p>17 censoring and depletion of susceptibles be 11:30:42AM</p> <p>18 information that would have potentially 11:30:46AM</p> <p>19 confounded the information contained in 11:30:48AM</p> <p>20 the FDA reports? 11:30:50AM</p> <p>21 MR. WANG: Objection to form. 11:30:52AM</p> <p>22 Vague and ambiguous. 11:30:53AM</p> <p>23 A. I don't see why it would, if 11:30:56AM</p> <p>24 the focus is did the alleged corrective 11:31:00AM</p> <p>25 disclosures affect Pharmacia's stock price 11:31:02AM</p>                       |
| <p style="text-align: right;">Page 135</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 impact on your opinions in this case? 11:29:04AM</p> <p>3 MR. WANG: Objection to form. 11:29:08AM</p> <p>4 A. It certainly doesn't have any 11:29:12AM</p> <p>5 affect on my opinions regarding 11:29:17AM</p> <p>6 materiality and loss causation. 11:29:19AM</p> <p>7 Q. Now, you've issued opinions in 11:29:21AM</p> <p>8 your rebuttal report regarding certain 11:29:23AM</p> <p>9 factors being confounding information that 11:29:26AM</p> <p>10 came into the market? 11:29:28AM</p> <p>11 A. That's correct. 11:29:29AM</p> <p>12 Q. And what does that mean? 11:29:29AM</p> <p>13 A. Confounding information would 11:29:30AM</p> <p>14 be information other than the information 11:29:32AM</p> <p>15 at issue that potentially could be 11:29:34AM</p> <p>16 affecting the stock price or security 11:29:37AM</p> <p>17 price of a company. 11:29:38AM</p> <p>18 Q. And you believe that Exhibit 70 11:29:40AM</p> <p>19 is not confounding information; is that 11:29:41AM</p> <p>20 your opinion, sir? 11:29:44AM</p> <p>21 A. With respect to the alleged 11:29:46AM</p> <p>22 corrective disclosures, that's correct. I 11:29:57AM</p> <p>23 mean, the issue at hand is the alleged 11:29:59AM</p> <p>24 corrective disclosures that were released 11:30:01AM</p> <p>25 on the morning of February 6th. 11:30:03AM</p> | <p style="text-align: right;">Page 137</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 and affect it on February 6th, and for a 11:31:06AM</p> <p>3 couple of reasons. 11:31:13AM</p> <p>4 One is that these briefing 11:31:13AM</p> <p>5 materials were released on the morning of 11:31:15AM</p> <p>6 February 6th. The market had a full day 11:31:18AM</p> <p>7 to process all the information. 11:31:21AM</p> <p>8 But, more importantly, I'm not 11:31:24AM</p> <p>9 aware of anything in the briefing 11:31:26AM</p> <p>10 documents that would contradict the 11:31:27AM</p> <p>11 alleged corrective disclosures that were 11:31:29AM</p> <p>12 made as reflected in the early pages of 11:31:31AM</p> <p>13 the statistical reviewer's briefing 11:31:35AM</p> <p>14 document. 11:31:37AM</p> <p>15 Q. Can we look back at your 11:31:37AM</p> <p>16 report, paragraph 72, where you are 11:31:39AM</p> <p>17 recounting the interrogatory response. 11:31:41AM</p> <p>18 And that's on page 23 of your report. 11:31:45AM</p> <p>19 And specifically number 1, 11:32:01AM</p> <p>20 subparagraph 1 of paragraph 72 says that 11:32:03AM</p> <p>21 "The entire study data was less favorable 11:32:05AM</p> <p>22 to Celebrex than the publicly reported 11:32:07AM</p> <p>23 six-month data with virtually every GI 11:32:09AM</p> <p>24 comparison worsening after six months." 11:32:12AM</p> <p>25 Do you see that? 11:32:14AM</p> |

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| Page 138                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 140                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I do. 11:32:14AM</p> <p>3 Q. And you say that fact is 11:32:15AM</p> <p>4 ascertainable from, you know, the three 11:32:16AM</p> <p>5 FDA reports, correct? 11:32:18AM</p> <p>6 A. That is correct, and in 11:32:19AM</p> <p>7 particular the statistical reviewer. 11:32:21AM</p> <p>8 Q. Now, the company's explanation 11:32:23AM</p> <p>9 in Exhibit 70 that the reason for that 11:32:24AM</p> <p>10 informative censoring or depletion of 11:32:27AM</p> <p>11 susceptibles, could that be confounding 11:32:29AM</p> <p>12 information that would have needed to be 11:32:33AM</p> <p>13 considered in determining how quickly the 11:32:35AM</p> <p>14 market would adjust to the fact number 1 11:32:37AM</p> <p>15 that you said was ascertainable from the 11:32:41AM</p> <p>16 FDA briefing documents? 11:32:45AM</p> <p>17 MR. WANG: Objection to form. 11:32:46AM</p> <p>18 Vague and ambiguous. 11:32:47AM</p> <p>19 A. Again, on the assumption that 11:32:48AM</p> <p>20 the market for the security is efficient, 11:32:50AM</p> <p>21 there is no scientific basis to believe it 11:32:53AM</p> <p>22 would take more than one trading day for 11:32:55AM</p> <p>23 the market to absorb this information in 11:32:57AM</p> <p>24 its totality. 11:33:01AM</p> <p>25 Now, with respect to the five 11:33:02AM</p>                                                                       | <p>1 LEHN - CONFIDENTIAL</p> <p>2 six-month data at the February 7th 11:34:00AM</p> <p>3 Advisory Committee, could that have been 11:34:02AM</p> <p>4 new information that the market would have 11:34:04AM</p> <p>5 processed on February 7th, 2001? 11:34:06AM</p> <p>6 A. But, again, where I'm having 11:34:13AM</p> <p>7 trouble understanding your question is 11:34:16AM</p> <p>8 that it is completely irrelevant for 11:34:18AM</p> <p>9 whether the alleged corrective disclosures 11:34:20AM</p> <p>10 were reflected in Pharmacia's stock price 11:34:22AM</p> <p>11 as of the close on February 6th. 11:34:25AM</p> <p>12 Q. Well, there were discussions 11:34:26AM</p> <p>13 about the CLASS trial and whether or not 11:34:28AM</p> <p>14 it was successful on the morning of 11:34:30AM</p> <p>15 February 7th; would you agree with me? 11:34:33AM</p> <p>16 A. My recollection is there was 11:34:37AM</p> <p>17 discussion of that. But, again, the 11:34:38AM</p> <p>18 alleged corrective disclosures were made 11:34:41AM</p> <p>19 on the morning of February 6th. 11:34:42AM</p> <p>20 Q. And the fact that Dr. Goldkind 11:34:43AM</p> <p>21 said that there were no safety-related 11:34:46AM</p> <p>22 conclusions that could be derived from the 11:34:49AM</p> <p>23 CLASS trial on the morning of February 11:34:51AM</p> <p>24 7th, you don't view that as corrective 11:34:53AM</p> <p>25 information? 11:34:56AM</p> |
| Page 139                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 141                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 alleged corrective disclosures, there's 11:33:04AM</p> <p>3 nothing in the briefing document that 11:33:07AM</p> <p>4 alters the factual information that would 11:33:09AM</p> <p>5 have served as a corrective disclosure. 11:33:10AM</p> <p>6 If there is additional discussion of that 11:33:12AM</p> <p>7 by the company, I don't see how that 11:33:14AM</p> <p>8 affects the ability of the market to 11:33:18AM</p> <p>9 process the information that had been 11:33:20AM</p> <p>10 released. That's another piece of 11:33:22AM</p> <p>11 information. 11:33:24AM</p> <p>12 But, you know, there were 11:33:25AM</p> <p>13 roughly 4 million shares that traded on 11:33:27AM</p> <p>14 February 6th. There were a lot of 11:33:29AM</p> <p>15 investors that were actively buying and 11:33:32AM</p> <p>16 selling shares of Pharmacia stock. We 11:33:35AM</p> <p>17 know from what Dr. Feinstein has concluded 11:33:39AM</p> <p>18 the market for this stock is efficient. 11:33:42AM</p> <p>19 And I think it is ludicrous to think that 11:33:44AM</p> <p>20 additional information that was disclosed 11:33:47AM</p> <p>21 would somehow impede the ability of the 11:33:49AM</p> <p>22 market to process the alleged corrective 11:33:52AM</p> <p>23 disclosures. 11:33:54AM</p> <p>24 Q. The fact that the company did 11:33:55AM</p> <p>25 not argue for the validity of the 11:33:58AM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Certainly not corrective of the 11:34:57AM</p> <p>3 alleged misrepresentations. And, again, 11:35:00AM</p> <p>4 going back to the second interrogatory 11:35:02AM</p> <p>5 response, and going to my paragraph 72, I 11:35:04AM</p> <p>6 think Dr. Feinstein has a very similar 11:35:08AM</p> <p>7 paragraph where we lay out our 11:35:11AM</p> <p>8 understanding of what the allegations are 11:35:14AM</p> <p>9 effectively and the alleged 11:35:17AM</p> <p>10 misrepresentations. That was all 11:35:19AM</p> <p>11 corrected on the morning of February 6th. 11:35:22AM</p> <p>12 Q. Were you aware that there was a 11:35:24AM</p> <p>13 global pharmaceutical medical and device 11:35:27AM</p> <p>14 and biotechnology conference sponsored by 11:35:30AM</p> <p>15 Merrill Lynch on February 6th, 2001? 11:35:33AM</p> <p>16 A. I have a vague reference to 11:35:37AM</p> <p>17 recollection that there was some 11:35:42AM</p> <p>18 conference on February 6th. 11:35:43AM</p> <p>19 Q. And are you aware that Fred 11:35:44AM</p> <p>20 Hassan, the CEO of Pharmacia, presented at 11:35:46AM</p> <p>21 that conference? 11:35:50AM</p> <p>22 A. Yes. 11:35:50AM</p> <p>23 Q. And are you aware that he 11:35:51AM</p> <p>24 presented the six-month JAMA results on 11:35:52AM</p> <p>25 February 6th, 2001? 11:35:55AM</p>                                                                     |

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| <p style="text-align: right;">Page 142</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I am aware of that, yes. 11:35:56AM</p> <p>3 Q. And were there market analysts 11:35:57AM</p> <p>4 in attendance at the Merrill Lynch 11:35:59AM</p> <p>5 conference? 11:36:00AM</p> <p>6 A. I presume there were. 11:36:01AM</p> <p>7 Q. And what was the purpose of 11:36:02AM</p> <p>8 that conference? 11:36:03AM</p> <p>9 A. I don't -- you know, I haven't 11:36:04AM</p> <p>10 read what the purpose of the conference 11:36:07AM</p> <p>11 was. 11:36:08AM</p> <p>12 Q. And do you have any 11:36:09AM</p> <p>13 understanding of why Mr. Hassan would be 11:36:09AM</p> <p>14 presenting before analysts at a Merrill 11:36:13AM</p> <p>15 Lynch pharmaceuticals conference? 11:36:16AM</p> <p>16 A. I don't have any firsthand 11:36:18AM</p> <p>17 information as to why he was there. 11:36:20AM</p> <p>18 Q. Could you speculate on why he 11:36:21AM</p> <p>19 would be presenting? 11:36:23AM</p> <p>20 A. I prefer not to. 11:36:24AM</p> <p>21 Q. Do you think maybe he was 11:36:25AM</p> <p>22 touting the company's products and 11:36:27AM</p> <p>23 results? 11:36:29AM</p> <p>24 A. You know, again, "touting" is a 11:36:29AM</p> <p>25 loaded word and I try to avoid that. He 11:36:31AM</p>                                                                        | <p style="text-align: right;">Page 144</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 was corrective was released on the morning 11:37:17AM</p> <p>3 of February 6th. 11:37:19AM</p> <p>4 And given the assumption that 11:37:23AM</p> <p>5 the market for the security is efficient, 11:37:24AM</p> <p>6 that information would have been fully 11:37:26AM</p> <p>7 reflected in Pharmacia's stock price by 11:37:27AM</p> <p>8 the close on February 6th. 11:37:30AM</p> <p>9 Q. I'm going to show you Exhibit 11:37:31AM</p> <p>10 391. Could you please take a look at that 11:37:33AM</p> <p>11 document. 11:37:35AM</p> <p>12 And I would ask you if you 11:37:42AM</p> <p>13 recognize this as the slides that you 11:37:44AM</p> <p>14 looked at in formulating your opinion with 11:37:45AM</p> <p>15 respect -- strike that. That's a bad 11:37:47AM</p> <p>16 question. 11:37:50AM</p> <p>17 Are these the slides you were 11:37:50AM</p> <p>18 referring to a moment ago? 11:37:52AM</p> <p>19 A. You know, I can't recall 11:37:54AM</p> <p>20 whether every slide is here, but it does 11:37:55AM</p> <p>21 appear to be, you know, the same document 11:37:57AM</p> <p>22 I've reviewed. 11:38:00AM</p> <p>23 Q. And if you go to the last three 11:38:01AM</p> <p>24 Bates numbers 626 in the middle of the 11:38:03AM</p> <p>25 document which I have marked as Exhibit 11:38:05AM</p>                   |
| <p style="text-align: right;">Page 143</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 was presumably conveying information. 11:36:34AM</p> <p>3 Q. Conveying information that 11:36:36AM</p> <p>4 investors may consider important about his 11:36:38AM</p> <p>5 company? 11:36:40AM</p> <p>6 A. I would presume as the CEO that 11:36:41AM</p> <p>7 that's what he would be doing. 11:36:43AM</p> <p>8 Q. And Celebrex at the time was 11:36:44AM</p> <p>9 Pharmacia's largest-selling drug? 11:36:45AM</p> <p>10 A. I believe that's right. 11:36:47AM</p> <p>11 Q. So it is not unreasonable that 11:36:49AM</p> <p>12 he would talk about Celebrex and how it 11:36:50AM</p> <p>13 was impacting the company's business? 11:36:52AM</p> <p>14 A. That's correct. 11:36:53AM</p> <p>15 Q. And did you consider the 11:36:54AM</p> <p>16 presentation or the slides from the 11:36:59AM</p> <p>17 presentation that Mr. Hassan made on 11:37:00AM</p> <p>18 February 6th, 2001 in formulating your 11:37:03AM</p> <p>19 opinions in this case? 11:37:05AM</p> <p>20 A. I did. 11:37:06AM</p> <p>21 Q. And did you discount those 11:37:06AM</p> <p>22 slides as unimportant for some reason? 11:37:08AM</p> <p>23 MR. WANG: Objection to form. 11:37:10AM</p> <p>24 A. They are, again, irrelevant in 11:37:12AM</p> <p>25 the sense that all of the information that 11:37:14AM</p> | <p style="text-align: right;">Page 145</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 391, there's a picture of some naked women 11:38:07AM</p> <p>3 and it says "JAMA, September 13th, 2000, 11:38:14AM</p> <p>4 Gastrointestinal Toxicity with Celecoxib 11:38:18AM</p> <p>5 versus NSAID Drugs for Osteoarthritis and 11:38:22AM</p> <p>6 Rheumatoid Arthritis, the CLASS Study"; do 11:38:22AM</p> <p>7 you see that? 11:38:28AM</p> <p>8 A. I do. 11:38:28AM</p> <p>9 Q. Is it fair to say that this 11:38:28AM</p> <p>10 slide is referring to the September 13th, 11:38:30AM</p> <p>11 2000 JAMA publication that is at the 11:38:32AM</p> <p>12 center or at least in part at the center 11:38:34AM</p> <p>13 of this case? 11:38:37AM</p> <p>14 MR. WANG: Objection to form. 11:38:37AM</p> <p>15 A. It appears to be. 11:38:38AM</p> <p>16 Q. And there are certain bullet 11:38:39AM</p> <p>17 points to the left of the picture of the 11:38:42AM</p> <p>18 JAMA article or JAMA journal, and the 11:38:43AM</p> <p>19 fourth bullet point down says "48 percent 11:38:46AM</p> <p>20 to 66 percent reduction in ulcer 11:38:48AM</p> <p>21 complications." Do you see that? 11:38:51AM</p> <p>22 A. I do. 11:38:52AM</p> <p>23 Q. And did you make any attempt to 11:38:52AM</p> <p>24 determine whether the 48 to 68 percent 11:38:55AM</p> <p>25 reduction, whether that corresponds to the 11:38:59AM</p> |

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CONFIDENTIAL

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| <p style="text-align: right;">Page 146</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 six-month data, or the entire study data? 11:39:01AM</p> <p>3 A. I did not. 11:39:04AM</p> <p>4 Q. So it would not impact your 11:39:05AM</p> <p>5 opinion that Mr. Hassan at the same exact 11:39:06AM</p> <p>6 time or the same day that the FDA Advisory 11:39:11AM</p> <p>7 Committee -- I'm sorry, the review reports 11:39:17AM</p> <p>8 that are Exhibit 506 and the briefing 11:39:22AM</p> <p>9 document, Exhibit 70, were posted on the 11:39:24AM</p> <p>10 Internet, that Mr. Hassan was making a 11:39:27AM</p> <p>11 presentation discussing the JAMA results, 11:39:29AM</p> <p>12 which I think we can all concede that the 11:39:34AM</p> <p>13 JAMA results were -- well, strike that. 11:39:37AM</p> <p>14 I've got to start over. 11:39:40AM</p> <p>15 You've come to an understanding 11:39:41AM</p> <p>16 in your preparations in this case that the 11:39:42AM</p> <p>17 JAMA article presented the six-month data 11:39:45AM</p> <p>18 as opposed to the entire study data; is 11:39:48AM</p> <p>19 that correct? 11:39:50AM</p> <p>20 A. That's my understanding. 11:39:50AM</p> <p>21 Q. And does it impact your opinion 11:39:51AM</p> <p>22 in any way that the same day that the 11:39:53AM</p> <p>23 company briefing document was posted and 11:39:58AM</p> <p>24 the FDA reviewer documents were posted, 11:40:00AM</p> <p>25 that Mr. Hassan was making a presentation 11:40:03AM</p> | <p style="text-align: right;">Page 148</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 misled into publishing this article; is 11:40:57AM</p> <p>3 that correct? 11:40:59AM</p> <p>4 MR. WANG: Objection to form. 11:40:59AM</p> <p>5 A. I don't have any basis for 11:41:06AM</p> <p>6 believing the market was aware of that, 11:41:08AM</p> <p>7 but, again, that is totally irrelevant as 11:41:08AM</p> <p>8 well, that if I look at the allegations in 11:41:10AM</p> <p>9 this case and then I look at the alleged 11:41:11AM</p> <p>10 corrective disclosures on February 6th, 11:41:12AM</p> <p>11 they were made and the market didn't 11:41:15AM</p> <p>12 react. 11:41:17AM</p> <p>13 MR. WANG: Scott, whenever you 11:41:25AM</p> <p>14 shift gears. 11:41:27AM</p> <p>15 MR. SAHAM: Yes, we can take a 11:41:27AM</p> <p>16 break. 11:41:29AM</p> <p>17 THE VIDEOGRAPHER: The time is 11:41:29AM</p> <p>18 approximately 11:41 a.m. This is the end 11:41:30AM</p> <p>19 of media number two. We are off the 11:41:33AM</p> <p>20 record. 11:41:35AM</p> <p>21 (Recess taken.) 11:41:39AM</p> <p>22 THE VIDEOGRAPHER: The time is 12:02:11PM</p> <p>23 approximately 12:02 p.m. This is the 12:02:18PM</p> <p>24 beginning of media number three. We are 12:02:20PM</p> <p>25 on the record. 12:02:23PM</p>                                                         |
| <p style="text-align: right;">Page 147</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 to analysts where he communicated or 11:40:04AM</p> <p>3 reiterated information about the JAMA 11:40:07AM</p> <p>4 article? 11:40:10AM</p> <p>5 A. Not at all. This would be 11:40:10AM</p> <p>6 stale information at this point. Assuming 11:40:12AM</p> <p>7 there were analysts in attendance, as we 11:40:15AM</p> <p>8 both reasonably assume, those very same 11:40:18AM</p> <p>9 analysts would have had access to the full 11:40:21AM</p> <p>10 CLASS data that was released on the 11:40:23AM</p> <p>11 morning of this presentation. 11:40:25AM</p> <p>12 And, you know, to believe that 11:40:27AM</p> <p>13 analysts and more importantly investors 11:40:28AM</p> <p>14 just blindly follow what CEOs say and 11:40:30AM</p> <p>15 don't look at other data is an 11:40:34AM</p> <p>16 unreasonable assumption. 11:40:37AM</p> <p>17 So the fact that it is not new 11:40:39AM</p> <p>18 and the fact that the market had the 11:40:41AM</p> <p>19 benefit of all the CLASS data released 11:40:44AM</p> <p>20 that morning makes this particular 11:40:46AM</p> <p>21 presentation in my opinion completely 11:40:48AM</p> <p>22 irrelevant. 11:40:50AM</p> <p>23 Q. The market was not aware on 11:40:51AM</p> <p>24 February 6th, 2001, though, that the 11:40:52AM</p> <p>25 editors of JAMA believed that they were 11:40:55AM</p>                                                                   | <p style="text-align: right;">Page 149</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 BY MR. SAHAM: 12:02:23PM</p> <p>3 Q. Dr. Lehn, would you agree with 12:02:23PM</p> <p>4 me that the Internet, back in 2001, 12:02:26PM</p> <p>5 February 2001, was sort of a different 12:02:28PM</p> <p>6 animal than it is today? 12:02:30PM</p> <p>7 MR. WANG: Objection to form. 12:02:34PM</p> <p>8 A. I'm not sure what you mean by 12:02:34PM</p> <p>9 "a different animal." 12:02:36PM</p> <p>10 Q. Was it used differently by 12:02:37PM</p> <p>11 people? 12:02:40PM</p> <p>12 MR. WANG: Same objection. 12:02:43PM</p> <p>13 A. Can you be more specific? 12:02:44PM</p> <p>14 Differently in what context? 12:02:48PM</p> <p>15 Q. Well, have you considered the 12:02:49PM</p> <p>16 posting of these documents on the Internet 12:02:51PM</p> <p>17 by the FDA on February 6th, 2001, is it 12:02:56PM</p> <p>18 your opinion or have you formulated an 12:02:59PM</p> <p>19 opinion whether the ability to be 12:03:01PM</p> <p>20 accessed, the timing of access, the 12:03:06PM</p> <p>21 utilization of those materials or ease of 12:03:08PM</p> <p>22 access would be different today than they 12:03:11PM</p> <p>23 were in 2001? 12:03:13PM</p> <p>24 A. Well, I think, you know, as a 12:03:17PM</p> <p>25 general matter, communications technology 12:03:19PM</p> |

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| Page 150                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 152                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 has made it easier over time to retrieve 12:03:23PM</p> <p>3 information. So, for example, the Patell 12:03:26PM</p> <p>4 and Wolfson study that we were talking 12:03:28PM</p> <p>5 about, you know, used data I think from 12:03:29PM</p> <p>6 the 1970s, and they were finding even back 12:03:32PM</p> <p>7 then you were getting most of the price 12:03:37PM</p> <p>8 reaction within the first five to ten 12:03:40PM</p> <p>9 minutes. 12:03:42PM</p> <p>10 So insofar as 12:03:42PM</p> <p>11 telecommunications technology has improved 12:03:44PM</p> <p>12 over time, then directionally at least 12:03:46PM</p> <p>13 markets should be even more efficient at 12:03:48PM</p> <p>14 processing information today than they 12:03:50PM</p> <p>15 were when Patell and Wolfson wrote this 12:03:51PM</p> <p>16 study. 12:03:54PM</p> <p>17 So at a high level I would tend 12:03:54PM</p> <p>18 to agree with that. Whether or not the 12:03:56PM</p> <p>19 incremental change from 2000 to today has 12:03:59PM</p> <p>20 been sufficiently important, you know, I 12:04:03PM</p> <p>21 don't know. 12:04:07PM</p> <p>22 Q. But you agree with me, and I 12:04:07PM</p> <p>23 think you agreed earlier, that earnings 12:04:09PM</p> <p>24 and dividends announcements were usually 12:04:11PM</p> <p>25 preceded by a very specific press release 12:04:14PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection to form. 12:05:05PM</p> <p>3 A. With respect to a conference 12:05:08PM</p> <p>4 call, obviously you would have to notify 12:05:11PM</p> <p>5 the analyst community so they know when to 12:05:15PM</p> <p>6 call in, if they wished to call in. I'm 12:05:18PM</p> <p>7 not sure you are right in the sense that 12:05:22PM</p> <p>8 it is always the case that the conference 12:05:24PM</p> <p>9 call would be when the earnings would be 12:05:26PM</p> <p>10 released. I think it is frequently the 12:05:28PM</p> <p>11 case, if not mostly the case, that the 12:05:31PM</p> <p>12 earnings would be released prior to the 12:05:33PM</p> <p>13 conference call and then you would have 12:05:35PM</p> <p>14 the conference call subsequent to the 12:05:36PM</p> <p>15 earnings release. 12:05:38PM</p> <p>16 Whether or not analysts know 12:05:40PM</p> <p>17 the precise time at which the earnings 12:05:42PM</p> <p>18 would be released, I don't know. 12:05:44PM</p> <p>19 Q. In your experience, the prior 12:05:46PM</p> <p>20 press release doesn't usually state we are 12:05:49PM</p> <p>21 going to release our earnings at such and 12:05:52PM</p> <p>22 such a point subsequent to the press 12:05:54PM</p> <p>23 release? 12:05:58PM</p> <p>24 A. I just don't know whether -- I 12:05:58PM</p> <p>25 mean, certainly for the conference call 12:06:02PM</p> |
| Page 151                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 153                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 revealing to the market when the 12:04:16PM</p> <p>3 announcement would occur; is that 12:04:17PM</p> <p>4 accurate? 12:04:19PM</p> <p>5 MR. WANG: Objection to form. 12:04:20PM</p> <p>6 That is compound and misstates your prior 12:04:21PM</p> <p>7 questions and his answers. 12:04:24PM</p> <p>8 A. Certainly investors would be 12:04:30PM</p> <p>9 aware of when the quarterly earnings 12:04:32PM</p> <p>10 announcement would be. But investors in 12:04:34PM</p> <p>11 this case were aware of when the Advisory 12:04:36PM</p> <p>12 Panel would be meeting. So I'm not sure 12:04:40PM</p> <p>13 of the relevance of it. 12:04:42PM</p> <p>14 Q. Well, with respect to an 12:04:43PM</p> <p>15 earnings announcement, you would get a 12:04:45PM</p> <p>16 precise press release saying exactly what 12:04:47PM</p> <p>17 time the announcement was going to occur, 12:04:49PM</p> <p>18 right? 12:04:53PM</p> <p>19 MR. WANG: Objection to form. 12:04:54PM</p> <p>20 A. You are referring to the 12:04:56PM</p> <p>21 conference call? 12:04:57PM</p> <p>22 Q. Yes, when the information 12:04:58PM</p> <p>23 relating to earnings would first be made 12:05:00PM</p> <p>24 public via conference call or a second 12:05:03PM</p> <p>25 press release. 12:05:05PM</p>                                                                                          | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the time would be there. But in terms of 12:06:04PM</p> <p>3 when the exact time in the day, the exact 12:06:05PM</p> <p>4 minute at which the earnings would be 12:06:07PM</p> <p>5 released, I'm not sure that that's the 12:06:08PM</p> <p>6 case. And maybe I just don't know. 12:06:11PM</p> <p>7 Q. And back in 2001 a lot of 12:06:13PM</p> <p>8 people had dial-up Internet connections; 12:06:15PM</p> <p>9 is that fair to say? 12:06:17PM</p> <p>10 A. I presume. 12:06:19PM</p> <p>11 Q. Do you remember what kind of 12:06:19PM</p> <p>12 Internet connection you had in 2001? 12:06:20PM</p> <p>13 A. I don't. 12:06:24PM</p> <p>14 Q. Is it fair to say your Internet 12:06:24PM</p> <p>15 connection is much quicker today than it 12:06:26PM</p> <p>16 was in 2001? 12:06:28PM</p> <p>17 A. It probably is, yes. 12:06:31PM</p> <p>18 Q. And is it also fair to say 12:06:32PM</p> <p>19 given the progression of Google and other 12:06:35PM</p> <p>20 search engines it is much easier to find 12:06:37PM</p> <p>21 information on the Internet today than it 12:06:40PM</p> <p>22 was in 2001? 12:06:42PM</p> <p>23 A. Yeah, but, again, I think all 12:06:44PM</p> <p>24 of that is irrelevant. The early studies 12:06:47PM</p> <p>25 on market price efficiency were based on 12:06:50PM</p>                                                                                      |

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| Page 154                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 156                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 stock price data from the 1960s, I think 12:06:51PM</p> <p>3 some even went back to the 1950s, and the 12:06:54PM</p> <p>4 studies found even then, when technology 12:06:56PM</p> <p>5 was quite different, that information was 12:06:58PM</p> <p>6 rapidly reflected in securities prices. 12:07:00PM</p> <p>7 I mean, 25 some-odd years ago I 12:07:03PM</p> <p>8 worked at the Securities and Exchange 12:07:05PM</p> <p>9 Commission, and it was before EDGAR and 12:07:07PM</p> <p>10 before the Internet technology, and I 12:07:09PM</p> <p>11 remember there used to be people from the 12:07:12PM</p> <p>12 major banks who would have people 12:07:13PM</p> <p>13 stationed at desks waiting for the latest 12:07:17PM</p> <p>14 filing, and they would go through the 12:07:19PM</p> <p>15 filing and immediately get on the phone 12:07:20PM</p> <p>16 calling people up in New York, and 12:07:23PM</p> <p>17 presumably some of them were traders, and 12:07:24PM</p> <p>18 that was before the Internet. 12:07:27PM</p> <p>19 And back when I was looking at 12:07:30PM</p> <p>20 stock price data when I was at the SEC, we 12:07:31PM</p> <p>21 were seeing that stock prices reacted very 12:07:34PM</p> <p>22 rapidly to the release of new information, 12:07:36PM</p> <p>23 frankly, regardless of the complexity if 12:07:39PM</p> <p>24 the market for the security was efficient. 12:07:42PM</p> <p>25 Q. Now, you are not relying on any 12:07:44PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 market is efficient and new information is 12:08:42PM</p> <p>3 rapidly reflected in securities prices. 12:08:45PM</p> <p>4 It doesn't circumscribe the 12:08:48PM</p> <p>5 information, say but it only applies to 12:08:50PM</p> <p>6 this kind of information. It is 12:08:54PM</p> <p>7 information. 12:08:55PM</p> <p>8 Q. But Patell and Wolfson are 12:08:55PM</p> <p>9 referring to earnings and dividends 12:08:57PM</p> <p>10 releases though, correct? 12:08:59PM</p> <p>11 A. That is correct. 12:08:59PM</p> <p>12 Q. And they state in their article 12:09:00PM</p> <p>13 that other types of information may be 12:09:01PM</p> <p>14 processed more slowly; is that correct? 12:09:03PM</p> <p>15 MR. WANG: Objection to form. 12:09:05PM</p> <p>16 A. Right. But, again, you have to 12:09:06PM</p> <p>17 also be aware that Patell and Wolfson were 12:09:08PM</p> <p>18 looking at a large sample study, and it is 12:09:10PM</p> <p>19 typical in the academic arena, as a matter 12:09:13PM</p> <p>20 of fact, I'm not even aware of anyone in 12:09:16PM</p> <p>21 the academic arena, when you are looking 12:09:17PM</p> <p>22 at a large sample of companies, you make a 12:09:21PM</p> <p>23 determination as to whether the market for 12:09:23PM</p> <p>24 each individual security in your large 12:09:24PM</p> <p>25 sample is efficient, and that that's one 12:09:26PM</p> |
| Page 155                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 157                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 peer-reviewed journal articles that 12:07:45PM</p> <p>3 studied the reaction of the market to the 12:07:49PM</p> <p>4 release of information relating to 12:07:55PM</p> <p>5 clinical trials; is that correct? 12:07:57PM</p> <p>6 A. Can you restate the question? 12:08:01PM</p> <p>7 Q. Yeah, I would be glad to. 12:08:02PM</p> <p>8 You have referred to, you know, 12:08:04PM</p> <p>9 Patell and Wolfson and other journal 12:08:05PM</p> <p>10 articles talking about the efficiency with 12:08:07PM</p> <p>11 which the market processes information; is 12:08:09PM</p> <p>12 that fair to say? 12:08:12PM</p> <p>13 A. That is correct. 12:08:13PM</p> <p>14 Q. None of the articles that you 12:08:13PM</p> <p>15 are referencing in your report or relying 12:08:15PM</p> <p>16 on here today are articles that studied 12:08:18PM</p> <p>17 the processing of information relating to 12:08:22PM</p> <p>18 clinical trials, medical clinical trials; 12:08:26PM</p> <p>19 is that correct? 12:08:29PM</p> <p>20 A. That's correct. But as a 12:08:30PM</p> <p>21 backdrop, again, remember that the 12:08:32PM</p> <p>22 efficient markets hypothesis is not unique 12:08:33PM</p> <p>23 to earnings and dividends, it says all 12:08:37PM</p> <p>24 publicly available information is 12:08:39PM</p> <p>25 reflected in securities prices if the 12:08:40PM</p>                                                                                                      | <p>1 LEHN - CONFIDENTIAL</p> <p>2 of the reasons why longer windows are 12:09:29PM</p> <p>3 typically used in the academic arena for 12:09:31PM</p> <p>4 large sample studies, is you are not 12:09:34PM</p> <p>5 making a determination that every stock 12:09:37PM</p> <p>6 trades in an efficient market. 12:09:38PM</p> <p>7 So that's sort of an important 12:09:41PM</p> <p>8 consideration. If one is assuming that 12:09:44PM</p> <p>9 the market is efficient, then by 12:09:45PM</p> <p>10 definition all public information is 12:09:47PM</p> <p>11 reflected in the price and new information 12:09:50PM</p> <p>12 is quickly reflected in the price. 12:09:51PM</p> <p>13 Q. But you are not disagreeing 12:09:53PM</p> <p>14 with Patell and Wolfson that less regular 12:09:55PM</p> <p>15 information, information less regular than 12:09:57PM</p> <p>16 earnings and dividends would take longer 12:10:00PM</p> <p>17 to process than earnings and dividend 12:10:01PM</p> <p>18 information? 12:10:04PM</p> <p>19 A. If the market for a security is 12:10:05PM</p> <p>20 not efficient, then I would agree that 12:10:07PM</p> <p>21 potentially, I wouldn't agree 12:10:12PM</p> <p>22 categorically, but potentially that might 12:10:13PM</p> <p>23 be a consideration that would affect the 12:10:16PM</p> <p>24 speed of adjustment. 12:10:17PM</p> <p>25 But, again, if you are making 12:10:18PM</p>            |

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| <p style="text-align: right;">Page 158</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 the assumption that the market is 12:10:19PM</p> <p>3 efficient, you have no basis saying, well, 12:10:21PM</p> <p>4 for this kind of information I think there 12:10:24PM</p> <p>5 are going to be delayed reactions, because 12:10:26PM</p> <p>6 then effectively what you are saying is I 12:10:28PM</p> <p>7 don't think the market for the security is 12:10:30PM</p> <p>8 efficient. 12:10:30PM</p> <p>9 Q. Well, Patell and Wolfson 12:10:31PM</p> <p>10 observed reactions that continued into the 12:10:32PM</p> <p>11 next day in efficient markets, correct? 12:10:34PM</p> <p>12 MR. WANG: Objection to form. 12:10:38PM</p> <p>13 A. Again, you know, we can go back 12:10:39PM</p> <p>14 and look, I don't think they made a 12:10:42PM</p> <p>15 determination as to whether every security 12:10:43PM</p> <p>16 in their sample traded in an efficient 12:10:46PM</p> <p>17 market. I mean, there were no camera 12:10:49PM</p> <p>18 factors back then. 12:10:52PM</p> <p>19 But I think they just had a 12:10:53PM</p> <p>20 large sample of companies and they looked 12:10:54PM</p> <p>21 at the aggregate results, which is not to 12:10:57PM</p> <p>22 say that every security traded in an 12:10:59PM</p> <p>23 efficient market. 12:11:02PM</p> <p>24 Q. But you are not relying on any 12:11:03PM</p> <p>25 particular study relating to the 12:11:04PM</p>                             | <p style="text-align: right;">Page 160</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 was due to random volatility? 12:12:13PM</p> <p>3 A. Again, when one conducts a 12:12:17PM</p> <p>4 test, which is what the event study does, 12:12:23PM</p> <p>5 it allows you to make a determination as 12:12:28PM</p> <p>6 to whether you have a scientific basis for 12:12:30PM</p> <p>7 believing that the stock price moved 12:12:32PM</p> <p>8 because of an information release. 12:12:36PM</p> <p>9 And after conducting the test, 12:12:39PM</p> <p>10 it is my opinion that you can't reject the 12:12:40PM</p> <p>11 hypothesis, this is just random 12:12:44PM</p> <p>12 volatility. It is not necessarily 12:12:47PM</p> <p>13 endorsing it and saying that it was, it is 12:12:48PM</p> <p>14 just saying you can't reject that. 12:12:50PM</p> <p>15 Q. And you would agree with me 12:12:52PM</p> <p>16 that there was negative information 12:12:53PM</p> <p>17 related to Pharmacia that was released 12:12:56PM</p> <p>18 into the market on February 7th? 12:12:58PM</p> <p>19 A. There was information released 12:13:00PM</p> <p>20 that potentially would be viewed as 12:13:15PM</p> <p>21 negative for Pharmacia, that's correct. 12:13:17PM</p> <p>22 Q. And because there was negative 12:13:19PM</p> <p>23 Pharmacia information, would that allow 12:13:21PM</p> <p>24 you to use a one-tail test instead of a 12:13:23PM</p> <p>25 two-tail test if you wanted to, or under 12:13:25PM</p> |
| <p style="text-align: right;">Page 159</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 revelation of information relating to 12:11:07PM</p> <p>3 clinical trials and how quickly that 12:11:11PM</p> <p>4 information would be processed in an 12:11:14PM</p> <p>5 efficient market; is that correct? 12:11:16PM</p> <p>6 MR. WANG: Asked and answered. 12:11:18PM</p> <p>7 A. Not specifically. But, again, 12:11:19PM</p> <p>8 the efficient market hypothesis says all 12:11:22PM</p> <p>9 public information, all, not just earnings 12:11:25PM</p> <p>10 or dividends or not just supposedly 12:11:28PM</p> <p>11 information that's easier to process. It 12:11:30PM</p> <p>12 says all public information is reflected 12:11:33PM</p> <p>13 in the security price and new public 12:11:36PM</p> <p>14 information is rapidly reflected in the 12:11:38PM</p> <p>15 price. That's what the theory says. 12:11:40PM</p> <p>16 And that's been tested and 12:11:43PM</p> <p>17 that's been tested with lots of data for 12:11:45PM</p> <p>18 different events. So there is no 12:11:47PM</p> <p>19 scientific basis for believing there is 12:11:50PM</p> <p>20 something unusual about information on 12:11:52PM</p> <p>21 clinical trials that would affect that 12:11:54PM</p> <p>22 conclusion. 12:11:57PM</p> <p>23 Q. Now, with respect to February 12:12:02PM</p> <p>24 7th, 2001, is it your opinion that the 12:12:07PM</p> <p>25 stock price decline on February 7th, 2001 12:12:10PM</p> | <p style="text-align: right;">Page 161</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 certain circumstances? 12:13:28PM</p> <p>3 A. It would depend on what your 12:13:30PM</p> <p>4 test was, whether you were testing -- 12:13:33PM</p> <p>5 whether you had a prior that all of the 12:13:35PM</p> <p>6 information released on that day would be 12:13:38PM</p> <p>7 negative or whether your prior is it would 12:13:41PM</p> <p>8 be positive, or whether your prior is it 12:13:44PM</p> <p>9 could have gone either way. 12:13:46PM</p> <p>10 Q. But you are not offering an 12:13:48PM</p> <p>11 opinion, you haven't, for the purposes of 12:13:49PM</p> <p>12 your assignment in this case, ruled out 12:13:51PM</p> <p>13 that the stock price movement on February 12:13:53PM</p> <p>14 7th was not due to -- was not due to 12:13:55PM</p> <p>15 random fluctuation? That's a bad 12:13:58PM</p> <p>16 question. I guess I need to break it 12:14:02PM</p> <p>17 down. 12:14:03PM</p> <p>18 You are not offering an opinion 12:14:04PM</p> <p>19 that the stock price movement on February 12:14:06PM</p> <p>20 7th was due to random volatility; is that 12:14:07PM</p> <p>21 correct? 12:14:11PM</p> <p>22 MR. WANG: Objection to form. 12:14:11PM</p> <p>23 A. Well, again, I conducted a test 12:14:13PM</p> <p>24 and the test indicated that the residual 12:14:18PM</p> <p>25 return on February 7th was not 12:14:23PM</p>                                                                 |

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| Page 162                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 164                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 statistically significant, which means 12:14:25PM</p> <p>3 that you can't have confidence that what 12:14:27PM</p> <p>4 you are observing was nothing more than 12:14:29PM</p> <p>5 just random variation. 12:14:31PM</p> <p>6 Q. In looking at Exhibit 4 of your 12:14:36PM</p> <p>7 report that we looked at earlier with the 12:14:43PM</p> <p>8 t-statistics, the residual return on 12:14:46PM</p> <p>9 February 7th was negative 0.29, is that 12:14:58PM</p> <p>10 correct, for February 7th, 2001? 12:15:06PM</p> <p>11 A. The residual return was a 12:15:08PM</p> <p>12 negative 0.290 percent. 12:15:09PM</p> <p>13 Q. And there is different 12:15:11PM</p> <p>14 thresholds of statistical significance; is 12:15:14PM</p> <p>15 that correct? 12:15:17PM</p> <p>16 MR. WANG: Objection to form. 12:15:17PM</p> <p>17 A. That is correct. 12:15:18PM</p> <p>18 Q. And what are some of the 12:15:18PM</p> <p>19 typical thresholds that are utilized for 12:15:20PM</p> <p>20 statistical significance? 12:15:22PM</p> <p>21 A. Well, the two that are most 12:15:23PM</p> <p>22 prominently used in the academic 12:15:27PM</p> <p>23 literature are the 1 percent and the 5 12:15:29PM</p> <p>24 percent. 12:15:32PM</p> <p>25 Q. And this one -- 1 percent being 12:15:33PM</p>                                                  | <p>1 LEHN - CONFIDENTIAL</p> <p>2 and 1 percent. But I always view that as 12:16:30PM</p> <p>3 more for completeness. If your key result 12:16:33PM</p> <p>4 was only significant at the 10 percent 12:16:36PM</p> <p>5 level, you probably wouldn't stand much 12:16:39PM</p> <p>6 chance of getting published. 12:16:41PM</p> <p>7 So, in short, 1 percent and 5 12:16:43PM</p> <p>8 percent are, you know, the gold standards 12:16:45PM</p> <p>9 for statistical significance. 12:16:48PM</p> <p>10 Q. And on February 7th the 12:16:50PM</p> <p>11 Pharmacia stock price declined in raw 12:16:52PM</p> <p>12 terms 2.64 percent? 12:16:54PM</p> <p>13 A. In raw terms, that's correct. 12:16:57PM</p> <p>14 Q. And the index which you used as 12:16:58PM</p> <p>15 a comparator, the industry index increased 12:17:01PM</p> <p>16 about a half a percent; is that correct? 12:17:05PM</p> <p>17 A. That's correct. 12:17:07PM</p> <p>18 Q. So on February 7th Pharmacia 12:17:07PM</p> <p>19 was moving in a different direction than 12:17:11PM</p> <p>20 the index that you compared it to; is that 12:17:14PM</p> <p>21 correct? 12:17:16PM</p> <p>22 A. Factually, that's correct. But 12:17:16PM</p> <p>23 it was moving in the same direction as the 12:17:19PM</p> <p>24 market index, and the most important thing 12:17:21PM</p> <p>25 is that the residual return of minus 2.90 12:17:25PM</p> |
| Page 163                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 165                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 99 percent? 12:15:35PM</p> <p>3 A. Correct. 12:15:37PM</p> <p>4 Q. So you wouldn't say that -- 12:15:37PM</p> <p>5 because this one you said that you would 12:15:39PM</p> <p>6 need a 1.69 t-stat under at least your 12:15:43PM</p> <p>7 calculations to reach statistical 12:15:46PM</p> <p>8 significance on the 10 percent threshold? 12:15:47PM</p> <p>9 MR. WANG: Objection to form. 12:15:50PM</p> <p>10 A. That's correct. 12:15:51PM</p> <p>11 Q. And what would it mean if you 12:15:51PM</p> <p>12 reached statistical significance on a 10 12:15:53PM</p> <p>13 percent threshold? 12:15:55PM</p> <p>14 MR. WANG: Objection to form. 12:15:57PM</p> <p>15 A. Well, similar to the FDA where 12:15:58PM</p> <p>16 the, you know, the p-values at issue in 12:15:59PM</p> <p>17 this case were, you know, what was 12:16:02PM</p> <p>18 relevant was whether it was the 5 percent 12:16:06PM</p> <p>19 or not, and in the academic arena it is 12:16:08PM</p> <p>20 generally understood that 5 percent 12:16:12PM</p> <p>21 significance is sort of the gold standard. 12:16:16PM</p> <p>22 Now, it is also true that in 12:16:18PM</p> <p>23 academic publications editors and referees 12:16:21PM</p> <p>24 for completeness sake often want authors 12:16:24PM</p> <p>25 to report 10 percent as well as 5 percent 12:16:27PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 percent was not significantly different 12:17:28PM</p> <p>3 from zero. 12:17:30PM</p> <p>4 Q. And is there a difference 12:17:32PM</p> <p>5 between -- and you said it needed to be 12:17:33PM</p> <p>6 1.98 in order to reach a 0.05 threshold; 12:17:37PM</p> <p>7 am I stating that correctly? 12:17:42PM</p> <p>8 A. 1.96 on a two-tail test, that's 12:17:43PM</p> <p>9 correct. 12:17:46PM</p> <p>10 Q. And that's the test you 12:17:46PM</p> <p>11 conducted? 12:17:46PM</p> <p>12 A. Correct. 12:17:48PM</p> <p>13 Q. And if you would have conducted 12:17:48PM</p> <p>14 a one-tail test, the numbers would have 12:17:51PM</p> <p>15 been different though? 12:17:52PM</p> <p>16 A. Well, the threshold for 12:17:53PM</p> <p>17 statistical significance at the 5 percent 12:17:54PM</p> <p>18 level using a one-tail test is I think 12:17:56PM</p> <p>19 about 1.65. So it would fail to meet that 12:17:59PM</p> <p>20 too. 12:18:02PM</p> <p>21 Q. And what's the threshold for 12:18:02PM</p> <p>22 using a one-tailed as opposed to a 12:18:05PM</p> <p>23 two-tailed? 12:18:08PM</p> <p>24 A. I'm sorry, threshold for? 12:18:09PM</p> <p>25 Q. If you see that there is 12:18:11PM</p>                                                                                                                                                                    |

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| Page 166                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 168                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 negative news about Pharmacia that morning 12:18:12PM</p> <p>3 it could justify the use of a one-tailed 12:18:15PM</p> <p>4 test; is that correct? 12:18:17PM</p> <p>5 MR. WANG: Objection to form. 12:18:18PM</p> <p>6 A. Well, that's sort of quite -- I 12:18:18PM</p> <p>7 don't mean this in a pejorative sense, but 12:18:20PM</p> <p>8 that is kind of cheating, that's not the 12:18:23PM</p> <p>9 way you go about a scientific test where 12:18:23PM</p> <p>10 you look at the data and then you 12:18:25PM</p> <p>11 determine what kind of -- what you want to 12:18:26PM</p> <p>12 do is say looking at the totality of the 12:18:29PM</p> <p>13 information released that day, do I have a 12:18:32PM</p> <p>14 prior belief that it would have been 12:18:34PM</p> <p>15 negative or positive. And I had no such 12:18:36PM</p> <p>16 prior belief based on all the information 12:18:38PM</p> <p>17 released that day. 12:18:42PM</p> <p>18 Q. Did you review Professor 12:19:11PM</p> <p>19 Feinstein's analysis regarding using your 12:19:12PM</p> <p>20 methodology and applying it to February 12:19:15PM</p> <p>21 7th where he came up with a p-value of 12:19:17PM</p> <p>22 0.0675 applying your analysis to February 12:19:25PM</p> <p>23 7th, do you recall looking at that in the 12:19:30PM</p> <p>24 rebuttal reports? Is that something 12:19:32PM</p> <p>25 you've been asked to opine on? 12:19:34PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 in paragraph 29 is it is all irrelevant. 12:21:35PM</p> <p>3 I mean, you know, it either is 12:21:37PM</p> <p>4 statistically significant or it is not, 12:21:39PM</p> <p>5 and I don't argue with the 6.75 percent 12:21:41PM</p> <p>6 p-value. 12:21:44PM</p> <p>7 But the rest of the language, 12:21:48PM</p> <p>8 frankly, I think is unscientific when he 12:21:49PM</p> <p>9 says that I found the residual stock price 12:21:51PM</p> <p>10 decline to be severe. That's a phrase 12:21:54PM</p> <p>11 that typically is not used in the 12:21:57PM</p> <p>12 scientific literature, that you stick to 12:21:59PM</p> <p>13 whether it is statistically significant or 12:22:02PM</p> <p>14 not. 12:22:04PM</p> <p>15 Q. Let's stick with the p-value of 12:22:04PM</p> <p>16 0.0675, and that is also referred to as a 12:22:07PM</p> <p>17 6.75 percent; is that correct? 12:22:11PM</p> <p>18 A. That's correct. 12:22:13PM</p> <p>19 Q. And what does that mean for the 12:22:13PM</p> <p>20 layman that when you develop a p-value of 12:22:15PM</p> <p>21 0.0675, what does that mean? 12:22:19PM</p> <p>22 A. What it means, we see in all 12:22:21PM</p> <p>23 fields, including the clinical trial with 12:22:25PM</p> <p>24 the FDA, if you have a p-value of 6.75 12:22:27PM</p> <p>25 percent, it means there's a 6.75 percent 12:22:30PM</p>                            |
| Page 167                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 169                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection to form. 12:19:36PM</p> <p>3 A. If you can refer me to that in 12:19:37PM</p> <p>4 his report. 12:19:38PM</p> <p>5 Q. I think I can. 12:19:40PM</p> <p>6 (Plaintiffs' Exhibit 508 marked 12:20:08PM</p> <p>7 for identification.) 12:20:12PM</p> <p>8 Q. This is Dr. Feinstein's 12:20:12PM</p> <p>9 rebuttal report. It will take me a minute 12:20:14PM</p> <p>10 to find. 12:20:18PM</p> <p>11 I'm looking at page 7 and 8 of 12:20:30PM</p> <p>12 Dr. Feinstein's rebuttal report. 12:20:35PM</p> <p>13 Have you formulated an opinion 12:20:37PM</p> <p>14 about what Dr. Feinstein discusses at 12:20:39PM</p> <p>15 paragraphs 29 through 32, specifically 12:20:44PM</p> <p>16 that when you run the regression for 12:20:48PM</p> <p>17 February 7th that you come up with a 12:20:51PM</p> <p>18 p-value of 0.0675? 12:20:54PM</p> <p>19 A. If I can just refresh my 12:20:57PM</p> <p>20 memory. 12:20:58PM</p> <p>21 Q. Sure, go right ahead. Take as 12:20:59PM</p> <p>22 much time as you need. 12:21:01PM</p> <p>23 (Witness perusing document.) 12:21:02PM</p> <p>24 A. Yeah, and, again, the opinion 12:21:31PM</p> <p>25 that I have based on what he has written 12:21:33PM</p>                                                                                                                                                                                                                    | <p>1 LEHN - CONFIDENTIAL</p> <p>2 that what you are observing is random and 12:22:35PM</p> <p>3 unrelated to the issue at hand. 12:22:37PM</p> <p>4 If it is random, if it has that 12:22:40PM</p> <p>5 degree of probability of being random, you 12:22:43PM</p> <p>6 don't have a scientific basis for saying 12:22:45PM</p> <p>7 that this was a significant day. 12:22:48PM</p> <p>8 Q. But the inverse would be true, 12:22:50PM</p> <p>9 there is a 93.25 percent chance that the 12:22:52PM</p> <p>10 stock price movement on the 7th was not 12:22:56PM</p> <p>11 due to random volatility; is that correct? 12:22:59PM</p> <p>12 A. That's correct. But, again, 12:23:01PM</p> <p>13 you know, the appropriate standard in 12:23:02PM</p> <p>14 scientific analysis is a fairly high bar 12:23:05PM</p> <p>15 and that's why the 5 percent threshold is 12:23:08PM</p> <p>16 the one that is the gold standard, because 12:23:10PM</p> <p>17 in order to have a scientific basis, to be 12:23:13PM</p> <p>18 confident that you have something, you 12:23:15PM</p> <p>19 need to have a threshold of 95 percent 12:23:17PM</p> <p>20 confidence. 12:23:19PM</p> <p>21 Q. But on the 10 percent threshold 12:23:20PM</p> <p>22 the movement on February 7th was 12:23:22PM</p> <p>23 statistically significant; is that 12:23:24PM</p> <p>24 correct? 12:23:26PM</p> <p>25 MR. WANG: Objection to form. 12:23:26PM</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I'm sorry, say it again. 12:23:28PM</p> <p>3 Q. If you used the 10 percent 12:23:30PM</p> <p>4 threshold for statistical significance, 12:23:31PM</p> <p>5 the stock price movement on February 7th 12:23:33PM</p> <p>6 was statistically significant; is that 12:23:35PM</p> <p>7 correct? 12:23:37PM</p> <p>8 MR. WANG: Objection to form. 12:23:37PM</p> <p>9 Vague and ambiguous. 12:23:40PM</p> <p>10 A. You know, I think that 12:23:44PM</p> <p>11 Dr. Feinstein here might have been using a 12:23:50PM</p> <p>12 one-tail test in paragraph 29 when he 12:23:52PM</p> <p>13 stated that. Because the threshold for 5 12:23:55PM</p> <p>14 percent significance on a one-tail test is 12:24:00PM</p> <p>15 a t-statistic of minus 1.65. 12:24:02PM</p> <p>16 And I had a t of minus 1.50, 12:24:07PM</p> <p>17 which on a one-tail test would probably 12:24:10PM</p> <p>18 translate to about 6.75 percent. So he 12:24:12PM</p> <p>19 must be using a one-tail test in his 12:24:16PM</p> <p>20 discussion here in paragraph 29. 12:24:18PM</p> <p>21 Q. So you would agree, then, if 12:24:19PM</p> <p>22 you used a one-tail test the stock price 12:24:20PM</p> <p>23 movement on February 7th, 2001 of 12:24:25PM</p> <p>24 Pharmacia was statistically significant at 12:24:28PM</p> <p>25 the 10 percent threshold? 12:24:30PM</p>                                                                          | <p style="text-align: right;">Page 172</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 statistical significance is the 95 percent 12:25:28PM</p> <p>3 confidence, not the 90 percent confidence. 12:25:31PM</p> <p>4 Q. Did you do any statistical 12:25:40PM</p> <p>5 analysis to determine whether any of the 12:25:42PM</p> <p>6 intraday trading, if you just took a 12:25:45PM</p> <p>7 particular hour or two of intraday 12:25:49PM</p> <p>8 trading, was statistically significant on 12:25:51PM</p> <p>9 either the 7th or the 8th? 12:25:53PM</p> <p>10 A. No. 12:25:55PM</p> <p>11 Q. And why didn't you do that? 12:25:55PM</p> <p>12 A. Well, there are a couple of 12:25:57PM</p> <p>13 reasons. Again, for purposes of my 12:25:58PM</p> <p>14 analysis with respect to materiality and 12:26:01PM</p> <p>15 loss causation, in my opinion, the 12:26:05PM</p> <p>16 appropriate day to look at was February 12:26:08PM</p> <p>17 6th because that's the day the alleged 12:26:09PM</p> <p>18 corrective disclosures were made. 12:26:12PM</p> <p>19 When it comes to February 7th 12:26:15PM</p> <p>20 and February 8th, I don't think either one 12:26:17PM</p> <p>21 of them is relevant for forming an opinion 12:26:20PM</p> <p>22 as to materiality and loss causation. But 12:26:23PM</p> <p>23 Dr. Feinstein apparently does believe they 12:26:26PM</p> <p>24 are. So especially in my rebuttal report 12:26:29PM</p> <p>25 I felt it was necessary to critique his 12:26:33PM</p> |
| <p style="text-align: right;">Page 171</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Using my event study results, 12:24:32PM</p> <p>3 that is correct. And in my opinion, that 12:24:36PM</p> <p>4 would not be sufficient for establishing a 12:24:37PM</p> <p>5 scientific basis that there was an unusual 12:24:40PM</p> <p>6 decline that day. 12:24:43PM</p> <p>7 Q. And in certain circumstances 12:24:44PM</p> <p>8 there are peer-reviewed -- there is 12:24:45PM</p> <p>9 peer-reviewed literature where a 10 12:24:48PM</p> <p>10 percent threshold is utilized to determine 12:24:50PM</p> <p>11 significance; is that correct? 12:24:52PM</p> <p>12 A. Well, it is not -- again, I 12:24:54PM</p> <p>13 don't want to say it never has been, but I 12:24:56PM</p> <p>14 used to edit a journal for about ten years 12:24:58PM</p> <p>15 and we published a lot of papers, and I 12:25:00PM</p> <p>16 can't remember anywhere the key result of 12:25:05PM</p> <p>17 the paper was significant at only a 10 12:25:07PM</p> <p>18 percent level. 12:25:09PM</p> <p>19 Now, for completeness sake, it 12:25:10PM</p> <p>20 is appropriate for editors to ask authors 12:25:12PM</p> <p>21 to report significance at different levels 12:25:15PM</p> <p>22 and let readers make their own judgment. 12:25:18PM</p> <p>23 But certainly the currency in the academic 12:25:21PM</p> <p>24 community and the currency with the FDA 12:25:25PM</p> <p>25 apparently is that what determines 12:25:27PM</p> | <p style="text-align: right;">Page 173</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 assumption that February 7th and February 12:26:36PM</p> <p>3 8th were relevant, and one of the 12:26:38PM</p> <p>4 critiques was that he didn't account for 12:26:41PM</p> <p>5 other information that was released on 12:26:43PM</p> <p>6 February 7th and 8th that was distinct 12:26:45PM</p> <p>7 from the alleged corrective disclosures. 12:26:47PM</p> <p>8 But I at this point at least 12:26:51PM</p> <p>9 didn't find it necessary to do anything 12:26:54PM</p> <p>10 other than point that out. 12:26:56PM</p> <p>11 Q. Now, just a second ago you 12:26:58PM</p> <p>12 testified that it was important with 12:27:02PM</p> <p>13 respect to editors to present multiple 12:27:03PM</p> <p>14 p-values so readers could use their own 12:27:07PM</p> <p>15 judgment; is that correct? 12:27:10PM</p> <p>16 A. That's correct. 12:27:11PM</p> <p>17 Q. And why is it important to let 12:27:11PM</p> <p>18 readers make their own judgment about 12:27:13PM</p> <p>19 those types of information? 12:27:15PM</p> <p>20 A. Well, I think it is just in the 12:27:16PM</p> <p>21 spirit of transparency is to let people 12:27:18PM</p> <p>22 see the full results. 12:27:22PM</p> <p>23 Q. Now, the JAMA article at issue 12:27:26PM</p> <p>24 in this case, that didn't let people see 12:27:30PM</p> <p>25 the full results, did it, sir? 12:27:32PM</p>                                               |

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| <p style="text-align: right;">Page 174</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection to form. 12:27:34PM</p> <p>3 A. You know, I haven't read the 12:27:35PM</p> <p>4 JAMA article with an eye towards that and 12:27:38PM</p> <p>5 I don't know exactly what you mean by "the 12:27:42PM</p> <p>6 full results." If you mean all of the 12:27:44PM</p> <p>7 CLASS data that was released on February 12:27:46PM</p> <p>8 6th, that's correct. 12:27:49PM</p> <p>9 Q. Let's just take a look at the 12:27:50PM</p> <p>10 CLASS article. It has been previously 12:27:53PM</p> <p>11 marked in this case as Wolfe Exhibit 3. 12:27:55PM</p> <p>12 And specifically looking at the 12:27:59PM</p> <p>13 first page of Wolfe Exhibit 3, the JAMA 12:28:00PM</p> <p>14 article from September 13th, 2000, which 12:28:02PM</p> <p>15 is at the center of this case, if you look 12:28:05PM</p> <p>16 at the abstract and the results down 12:28:07PM</p> <p>17 towards the bottom, do you see that? 12:28:10PM</p> <p>18 MR. WANG: Objection to form. 12:28:12PM</p> <p>19 A. I do. 12:28:13PM</p> <p>20 Q. Where it says Results. And I 12:28:14PM</p> <p>21 think you reference the p-value of 0.09 in 12:28:16PM</p> <p>22 your report. Do you recall that? 12:28:19PM</p> <p>23 A. That's correct. 12:28:20PM</p> <p>24 Q. And the p-value here of 0.09 is 12:28:21PM</p> <p>25 based on the six-month data; is that 12:28:24PM</p> | <p style="text-align: right;">Page 176</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 entire study; is that correct? 12:29:46PM</p> <p>3 A. Which one now, which table? 12:29:47PM</p> <p>4 Q. 2? 12:29:49PM</p> <p>5 A. Table 2, correct. 12:29:50PM</p> <p>6 Q. And it provides a p-value for 12:29:51PM</p> <p>7 both -- Celebrex being compared to both 12:29:53PM</p> <p>8 diclofenac and ibuprofen jointly as 0.45, 12:29:56PM</p> <p>9 do you see that? 12:29:56PM</p> <p>10 A. Correct. 12:30:03PM</p> <p>11 Q. That 0.45 number was not 12:30:03PM</p> <p>12 communicated in the JAMA article, was it? 12:30:05PM</p> <p>13 A. I don't believe so, no. 12:30:07PM</p> <p>14 Q. So the JAMA article didn't give 12:30:09PM</p> <p>15 readers the ability to look at all of the 12:30:12PM</p> <p>16 data and make their own determination, did 12:30:14PM</p> <p>17 it? 12:30:18PM</p> <p>18 MR. WANG: Objection. 12:30:18PM</p> <p>19 A. Yeah. But, again, just in 12:30:19PM</p> <p>20 context, you know, when I edited a journal 12:30:21PM</p> <p>21 we wouldn't require all of the data to be 12:30:26PM</p> <p>22 published, you would have to make 12:30:28PM</p> <p>23 editorial decisions as to what was 12:30:33PM</p> <p>24 published. I don't want to leave the 12:30:34PM</p> <p>25 impression that it is the norm in the 12:30:36PM</p>                                                         |
| <p style="text-align: right;">Page 175</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 correct? 12:28:26PM</p> <p>3 A. That's my recollection. 12:28:26PM</p> <p>4 Q. And the p-value, if you would 12:28:27PM</p> <p>5 have looked at the entire study data, 12:28:30PM</p> <p>6 turns into 0.45; is that correct? 12:28:32PM</p> <p>7 A. I forget the exact number, but 12:28:35PM</p> <p>8 I know it does go up. 12:28:36PM</p> <p>9 Q. Why don't you look at the 506, 12:28:39PM</p> <p>10 which is the statistical reviewer's 12:28:42PM</p> <p>11 report. It is Exhibit A to 506 and 12:28:46PM</p> <p>12 specifically if you turn to page 4 of the 12:28:50PM</p> <p>13 statistical reviewer's report. 12:28:52PM</p> <p>14 A. I'm sorry, which table? 12:29:16PM</p> <p>15 Q. If you go to page 4 of the 12:29:18PM</p> <p>16 first report, which is the statistical 12:29:20PM</p> <p>17 reviewer's report, Exhibit A, there is a 12:29:22PM</p> <p>18 Table 2, Summary of CSUGIE Incidents. 12:29:22PM</p> <p>19 That's reporting the, we will call them 12:29:39PM</p> <p>20 complicated ulcers; are you okay with 12:29:41PM</p> <p>21 that? 12:29:43PM</p> <p>22 A. Sure. 12:29:43PM</p> <p>23 Q. Then we don't have to use an 12:29:43PM</p> <p>24 acronym. That is reporting the 12:29:44PM</p> <p>25 complicated ulcer incidents over the 12:29:44PM</p>                                                                                  | <p style="text-align: right;">Page 177</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 scientific community that all of the 12:30:37PM</p> <p>3 underlying data gets published with the 12:30:39PM</p> <p>4 particular paper being published. 12:30:41PM</p> <p>5 Q. The JAMA editors didn't even 12:30:43PM</p> <p>6 get all of the data, did they? 12:30:45PM</p> <p>7 MR. WANG: Objection to form. 12:30:48PM</p> <p>8 Q. They didn't get to make a 12:30:49PM</p> <p>9 decision about whether they published the 12:30:52PM</p> <p>10 twelve or the six, they just got the six? 12:30:54PM</p> <p>11 MR. WANG: Objection. 12:30:54PM</p> <p>12 A. I don't really know factually 12:30:54PM</p> <p>13 what they knew and what they didn't know 12:30:56PM</p> <p>14 and what transpired between them and the 12:30:58PM</p> <p>15 authors of the article. 12:31:00PM</p> <p>16 Q. Did you review the testimony of 12:31:01PM</p> <p>17 Catherine DeAngelis in this case? 12:31:04PM</p> <p>18 A. I may have. It doesn't -- it 12:31:09PM</p> <p>19 doesn't ring a bell as I sit here. 12:31:12PM</p> <p>20 Q. Did you review the deposition 12:31:14PM</p> <p>21 testimony of Drummond Rennie? 12:31:15PM</p> <p>22 A. Again, I have reviewed a lot of 12:31:20PM</p> <p>23 documents. I don't recall that particular 12:31:22PM</p> <p>24 one. 12:31:23PM</p> <p>25 Q. Do you recall that either of 12:31:23PM</p> |

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| Page 178                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 180                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 the two editors of JAMA having testified 12:31:25PM</p> <p>3 that they were lied to and misled by 12:31:27PM</p> <p>4 receiving only the six-month data and not 12:31:29PM</p> <p>5 the entire study data? 12:31:31PM</p> <p>6 MR. WANG: Objection. 12:31:32PM</p> <p>7 A. I do recall quotes attributed 12:31:33PM</p> <p>8 to Mr. Wolfe I think, or Dr. Wolfe to that 12:31:35PM</p> <p>9 effect. 12:31:37PM</p> <p>10 Q. And do you recall that three of 12:31:37PM</p> <p>11 the authors of the JAMA article wrote a 12:31:41PM</p> <p>12 letter to JAMA many months after, I think 12:31:43PM</p> <p>13 it was in November of 2001, where they 12:31:48PM</p> <p>14 conceded that they only provided the 12:31:50PM</p> <p>15 six-month data to the JAMA editorial 12:31:52PM</p> <p>16 board? 12:31:56PM</p> <p>17 MR. WANG: Objection. 12:31:57PM</p> <p>18 A. I don't recall that 12:31:58PM</p> <p>19 specifically as I sit here. I may have 12:31:58PM</p> <p>20 been aware of it at some point. But it 12:32:00PM</p> <p>21 doesn't ring a bell. 12:32:02PM</p> <p>22 Q. In comparing a p-value of 0.09 12:32:05PM</p> <p>23 to a p-value of 0.45, would you agree that 12:32:08PM</p> <p>24 those are quantitatively different 12:32:12PM</p> <p>25 p-values? 12:32:14PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 any bearing on any opinions regarding 12:33:09PM</p> <p>3 materiality and loss causation. 12:33:11PM</p> <p>4 Q. Now, who defined your 12:33:27PM</p> <p>5 assignment in this case with respect to 12:33:30PM</p> <p>6 which days you would look at the intraday 12:33:32PM</p> <p>7 trading for? 12:33:37PM</p> <p>8 A. Can you repeat that? 12:33:40PM</p> <p>9 Q. Who defined your assignment -- 12:33:41PM</p> <p>10 you looked at intraday trading I think at 12:33:43PM</p> <p>11 the 6th and the 8th, correct? 12:33:46PM</p> <p>12 A. I mean, I've looked at it on 12:33:49PM</p> <p>13 all three days now. 12:33:51PM</p> <p>14 Q. But you didn't look at the 12:33:52PM</p> <p>15 intraday trading on the 7th until after 12:33:54PM</p> <p>16 you saw Dr. Feinstein's rebuttal report, 12:33:57PM</p> <p>17 correct? 12:33:59PM</p> <p>18 A. That is correct. 12:33:59PM</p> <p>19 Q. And even subsequent to that -- 12:34:00PM</p> <p>20 A. Let me just take that back. I 12:34:02PM</p> <p>21 might have looked at it since I had data, 12:34:04PM</p> <p>22 but I didn't feel it was relevant when I 12:34:06PM</p> <p>23 filed my initial report. It became more 12:34:07PM</p> <p>24 relevant after Dr. Feinstein filed his 12:34:11PM</p> <p>25 report and I was asked to file a rebuttal 12:34:13PM</p> |
| Page 179                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 181                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection. 12:32:16PM</p> <p>3 A. By definition they are 12:32:16PM</p> <p>4 quantitatively different, correct. 12:32:18PM</p> <p>5 Q. What does it mean to have a 12:32:20PM</p> <p>6 p-value of 0.45, what does that mean with 12:32:22PM</p> <p>7 respect to quantifying the chance that any 12:32:25PM</p> <p>8 difference between the two things being 12:32:28PM</p> <p>9 compared is due to random volatility or 12:32:29PM</p> <p>10 randomness? 12:32:32PM</p> <p>11 A. Well, it would mean that there 12:32:34PM</p> <p>12 is a 45 percent chance that what you are 12:32:35PM</p> <p>13 observing is random. 12:32:39PM</p> <p>14 Q. And 0.09 p-value would mean 12:32:39PM</p> <p>15 there is only a 9 percent chance of the 12:32:42PM</p> <p>16 observation being random? 12:32:44PM</p> <p>17 A. That's correct. 12:32:45PM</p> <p>18 Q. Would you agree that 12:32:46PM</p> <p>19 quantitatively 45 percent chance of random 12:32:51PM</p> <p>20 occurrence compared to 9 percent chance of 12:32:56PM</p> <p>21 randomness, that those are numerically 12:32:59PM</p> <p>22 different? 12:33:03PM</p> <p>23 MR. WANG: Objection. 12:33:03PM</p> <p>24 A. By definition they are 12:33:04PM</p> <p>25 numerically different. None of that has 12:33:06PM</p>  | <p>1 LEHN - CONFIDENTIAL</p> <p>2 report. 12:34:15PM</p> <p>3 Q. And who defined your assignment 12:34:16PM</p> <p>4 with respect to which intraday trading you 12:34:17PM</p> <p>5 would comment on in your report? 12:34:20PM</p> <p>6 A. I did. 12:34:21PM</p> <p>7 Q. And did you have any 12:34:22PM</p> <p>8 consultation with counsel before you made 12:34:24PM</p> <p>9 that decision? 12:34:26PM</p> <p>10 A. No consultation with respect to 12:34:27PM</p> <p>11 what I would look at. At some point I 12:34:29PM</p> <p>12 obviously circulated a draft and received 12:34:33PM</p> <p>13 editorial comments from counsel. 12:34:35PM</p> <p>14 Q. Would it be possible in your 12:34:36PM</p> <p>15 mind to calculate the statistical 12:34:39PM</p> <p>16 significance of the \$1.50 decline between 12:34:42PM</p> <p>17 9:30 and 10:30 on February 7th, is that 12:34:46PM</p> <p>18 something you could do? 12:34:49PM</p> <p>19 A. I'm sorry, the \$1.50 decline 12:34:51PM</p> <p>20 from 9:30 -- 12:34:53PM</p> <p>21 Q. We looked at the table before. 12:34:55PM</p> <p>22 I think we agreed that there was 12:34:57PM</p> <p>23 approximately a \$1.50 decline between 12:34:59PM</p> <p>24 opening and 10:35 a.m. on February 7th, 12:35:02PM</p> <p>25 2001; do you remember that? 12:35:05PM</p>                                 |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection to form. 12:35:06PM</p> <p>3 I don't believe that's correct or that we 12:35:08PM</p> <p>4 have discussed that before. 12:35:10PM</p> <p>5 Q. You would agree with me we 12:35:11PM</p> <p>6 talked about that earlier, correct? 12:35:13PM</p> <p>7 A. "That" being? 12:35:14PM</p> <p>8 Q. The \$1.50 decline between the 12:35:15PM</p> <p>9 opening of trading on February 7th and 12:35:18PM</p> <p>10 10:35 a.m. 12:35:20PM</p> <p>11 MR. WANG: Objection to form. 12:35:22PM</p> <p>12 Misstates the evidence and prior 12:35:23PM</p> <p>13 testimony. 12:35:25PM</p> <p>14 A. We discussed the decline. And, 12:35:25PM</p> <p>15 again, I think there is an issue as to 12:35:30PM</p> <p>16 whether it is \$1.50 or is it -- 12:35:32PM</p> <p>17 Q. \$1.48? 12:35:34PM</p> <p>18 A. -- or some other number. But I 12:35:35PM</p> <p>19 do recall that discussion. 12:35:38PM</p> <p>20 Q. And we can look at it again. 12:35:39PM</p> <p>21 But it is somewhere in the range of \$1.50, 12:35:40PM</p> <p>22 give or take a few pennies; is that fair? 12:35:43PM</p> <p>23 MR. WANG: Objection to the 12:35:46PM</p> <p>24 form. Misstates the evidence. 12:35:47PM</p> <p>25 A. And if you could identify 12:35:48PM</p>                     | <p>1 LEHN - CONFIDENTIAL</p> <p>2 conceptually. The issue often and the 12:36:36PM</p> <p>3 thorniness in doing intraday analyses is 12:36:40PM</p> <p>4 often the data limitations, the extent one 12:36:45PM</p> <p>5 can get the necessary data to do the 12:36:48PM</p> <p>6 analysis. But at least at a conceptual 12:36:50PM</p> <p>7 level there is no reason why you couldn't 12:36:53PM</p> <p>8 do an equivalent event study type analysis 12:36:55PM</p> <p>9 on intraday data. 12:36:58PM</p> <p>10 Q. And you haven't done that in 12:36:59PM</p> <p>11 this case though? 12:37:00PM</p> <p>12 A. I haven't felt it necessary to 12:37:01PM</p> <p>13 this point, that's correct. 12:37:03PM</p> <p>14 Q. So you don't, as we sit here 12:37:03PM</p> <p>15 today, you can't or are not planning on 12:37:06PM</p> <p>16 offering an opinion that the stock price 12:37:10PM</p> <p>17 decline on February 7th between 9:30 a.m. 12:37:12PM</p> <p>18 and 10:30 a.m. was not statistically 12:37:16PM</p> <p>19 significant? 12:37:18PM</p> <p>20 MR. WANG: Objection to form. 12:37:19PM</p> <p>21 A. I haven't been asked by counsel 12:37:20PM</p> <p>22 to do that. And in my initial report and 12:37:25PM</p> <p>23 in my rebuttal report I didn't find it was 12:37:29PM</p> <p>24 necessary to do that. 12:37:31PM</p> <p>25 Q. And, similarly, you are also 12:37:32PM</p> |
| Page 183                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 185                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 exactly what time period you are looking 12:35:50PM</p> <p>3 at, from what minute to what minute? 12:35:52PM</p> <p>4 Q. I was just looking up to about 12:35:54PM</p> <p>5 10:35 in the morning. Pharmacia traded on 12:35:56PM</p> <p>6 the New York Stock Exchange in 2001? 12:35:58PM</p> <p>7 A. It did. 12:36:00PM</p> <p>8 Q. And the New York Stock 12:36:00PM</p> <p>9 Exchange, I think last time -- it opens 12:36:02PM</p> <p>10 around 9:30? 12:36:05PM</p> <p>11 A. That's correct. 12:36:06PM</p> <p>12 Q. So the opening of trading at 12:36:06PM</p> <p>13 approximately 9:30, if you look at 9:30 to 12:36:09PM</p> <p>14 10:30, that would be approximately an 12:36:12PM</p> <p>15 hour? 12:36:14PM</p> <p>16 A. That's correct. It would be 12:36:14PM</p> <p>17 exactly an hour. 12:36:15PM</p> <p>18 Q. That's just laying the 12:36:16PM</p> <p>19 foundation for my question. 12:36:18PM</p> <p>20 Is there a way as an economist, 12:36:19PM</p> <p>21 a scientist, a learned man, that you could 12:36:21PM</p> <p>22 calculate the statistical significance of 12:36:25PM</p> <p>23 the stock price decline over that hour 12:36:26PM</p> <p>24 window based on the intraday data? 12:36:28PM</p> <p>25 A. There is a way to do that 12:36:32PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 not offering an opinion that the 12:37:35PM</p> <p>3 approximately \$2 stock decline on February 12:37:37PM</p> <p>4 8th in the morning, the first hour or two 12:37:39PM</p> <p>5 of trading, we can look at your -- I 12:37:43PM</p> <p>6 believe it is Exhibit 11, the 12:37:46PM</p> <p>7 approximately \$2 decline between the 12:37:52PM</p> <p>8 opening and 10:35ish, that you haven't 12:37:54PM</p> <p>9 done an analysis to determine whether that 12:38:00PM</p> <p>10 stock decline was statistically 12:38:02PM</p> <p>11 significant, correct? 12:38:04PM</p> <p>12 A. As of this date, I have not, 12:38:04PM</p> <p>13 that's correct. 12:38:06PM</p> <p>14 Q. And counsel has not asked you 12:38:07PM</p> <p>15 to do that? 12:38:08PM</p> <p>16 A. To this date, they have not 12:38:09PM</p> <p>17 asked me to do that. 12:38:10PM</p> <p>18 Q. And as we sit here today, you 12:38:12PM</p> <p>19 are not planning on testifying about that 12:38:13PM</p> <p>20 at trial, correct? 12:38:15PM</p> <p>21 MR. WANG: Objection to form. 12:38:17PM</p> <p>22 A. Again, if counsel asks me to 12:38:18PM</p> <p>23 consider doing that, then I will consider 12:38:20PM</p> <p>24 doing that. 12:38:22PM</p> <p>25 Q. But you have some 12:38:23PM</p>                                                                                      |

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| Page 186                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 188                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 understanding, I mean, you have been doing 12:38:24PM</p> <p>3 this a long time, you know, if you got -- 12:38:26PM</p> <p>4 for fairness, you have to put in your 12:38:28PM</p> <p>5 report what you are going to testify at 12:38:30PM</p> <p>6 trial unless the court blesses, you know, 12:38:32PM</p> <p>7 the use of some additional testimony that 12:38:34PM</p> <p>8 hadn't previously been discussed; is that 12:38:37PM</p> <p>9 your understanding of how the game works? 12:38:38PM</p> <p>10 MR. WANG: Objection. Calls 12:38:41PM</p> <p>11 for a legal conclusion. 12:38:42PM</p> <p>12 A. I'm not a lawyer. 12:38:43PM</p> <p>13 Q. That's fair. I will withdraw 12:38:44PM</p> <p>14 that question. 12:38:46PM</p> <p>15 The FDA committee meeting on 12:39:02PM</p> <p>16 February 7th, that was an open meeting, 12:39:04PM</p> <p>17 correct? 12:39:06PM</p> <p>18 A. That's my understanding. 12:39:06PM</p> <p>19 Q. And analysts could have been in 12:39:08PM</p> <p>20 attendance at the meeting? 12:39:10PM</p> <p>21 A. That's my understanding. 12:39:11PM</p> <p>22 Q. And the analysts during that 12:39:12PM</p> <p>23 morning could have had conversations with 12:39:13PM</p> <p>24 members of the committee or presenters; is 12:39:16PM</p> <p>25 that fair? 12:39:19PM</p>                                   | <p>1 LEHN - CONFIDENTIAL</p> <p>2 variable; is that correct? 12:40:18PM</p> <p>3 A. That's correct. 12:40:19PM</p> <p>4 Q. And why did you choose a 12:40:20PM</p> <p>5 three-day dummy variable? 12:40:22PM</p> <p>6 MR. WANG: Objection to form. 12:40:23PM</p> <p>7 A. Well, first, to start, it is a 12:40:24PM</p> <p>8 decision that in effect lowers the 12:40:28PM</p> <p>9 standard error from the regression because 12:40:31PM</p> <p>10 you are controlling for more days 12:40:33PM</p> <p>11 effectively, and what that does is it 12:40:35PM</p> <p>12 makes it easier to find statistical 12:40:37PM</p> <p>13 significance. 12:40:39PM</p> <p>14 So as someone who has been 12:40:41PM</p> <p>15 retained by counsel for defendants, it is 12:40:43PM</p> <p>16 a conservative assumption in that, if 12:40:47PM</p> <p>17 anything, it biases in favor of finding 12:40:50PM</p> <p>18 more statistically significant days, and 12:40:53PM</p> <p>19 on the day of the alleged corrective 12:40:56PM</p> <p>20 disclosure basically biases in favor of 12:40:57PM</p> <p>21 finding a statistically significant 12:41:00PM</p> <p>22 return. 12:41:02PM</p> <p>23 The second is a couple of 12:41:03PM</p> <p>24 practical considerations. One is that 12:41:06PM</p> <p>25 often there are disputes in litigation 12:41:09PM</p>                      |
| Page 187                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 189                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I would presume so. 12:39:19PM</p> <p>3 Q. Now, you used dummy variables 12:39:21PM</p> <p>4 in this case for your regression analysis; 12:39:32PM</p> <p>5 is that correct? 12:39:35PM</p> <p>6 A. That's correct. 12:39:35PM</p> <p>7 Q. What is a dummy variable? 12:39:36PM</p> <p>8 Explain to the dummy what a dummy variable 12:39:38PM</p> <p>9 is. 12:39:41PM</p> <p>10 A. It basically is an indicator 12:39:41PM</p> <p>11 variable that you turn on, by assigning a 12:39:43PM</p> <p>12 value of 1 on the relevant date, and then 12:39:47PM</p> <p>13 on all other dates that particular dummy 12:39:50PM</p> <p>14 variable takes on the value of zero. 12:39:54PM</p> <p>15 If in a regression over the 12:39:56PM</p> <p>16 class period you are trying to identify 12:39:57PM</p> <p>17 whether the residual return on a given day 12:39:58PM</p> <p>18 was statistically significant, you would 12:40:02PM</p> <p>19 put a dummy variable in for that day, and 12:40:03PM</p> <p>20 then the coefficient on that is the 12:40:05PM</p> <p>21 residual return and there would be a 12:40:07PM</p> <p>22 t-statistic corresponding to that 12:40:11PM</p> <p>23 coefficient or residual return. 12:40:12PM</p> <p>24 Q. And the dummy variable you used 12:40:14PM</p> <p>25 in this case was a three-day dummy 12:40:16PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 about the timing of different information 12:41:11PM</p> <p>3 releases, as we are seeing here, whether a 12:41:14PM</p> <p>4 one-day window or a two-day window is 12:41:18PM</p> <p>5 appropriate. 12:41:21PM</p> <p>6 And recognizing that was likely 12:41:22PM</p> <p>7 going to be the case to mitigate potential 12:41:24PM</p> <p>8 criticism of the underlying regression 12:41:27PM</p> <p>9 model, I decided to err on the side of 12:41:29PM</p> <p>10 being conservative and include three 12:41:33PM</p> <p>11 separate daily dummy variables, one 12:41:35PM</p> <p>12 before, one the day of, and one the day 12:41:38PM</p> <p>13 after. 12:41:41PM</p> <p>14 But I've also replicated it, 12:41:42PM</p> <p>15 the analysis, by using only the dummy 12:41:45PM</p> <p>16 variable for the relevant day and none of 12:41:48PM</p> <p>17 the results change appreciably. 12:41:50PM</p> <p>18 Q. Now, you are offering an 12:41:51PM</p> <p>19 opinion, or at least I think you are 12:41:52PM</p> <p>20 offering an opinion that the corrective 12:41:54PM</p> <p>21 disclosure occurred on February 6th, 2001; 12:41:56PM</p> <p>22 is that correct? 12:41:59PM</p> <p>23 A. That is correct. 12:41:59PM</p> <p>24 Q. Could you just give me the full 12:41:59PM</p> <p>25 bases for that opinion -- 12:42:01PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. For the opinion -- 12:42:02PM</p> <p>3 Q. -- that it occurred on February 12:42:03PM</p> <p>4 6th? 12:42:05PM</p> <p>5 A. Sure. When I look at the 12:42:06PM</p> <p>6 allegations, and originally I looked at 12:42:09PM</p> <p>7 the allegations in the complaint, and then 12:42:13PM</p> <p>8 I secondarily looked at the allegations in 12:42:15PM</p> <p>9 the second interrogatory response, and 12:42:18PM</p> <p>10 basically that laid out the specifics as 12:42:23PM</p> <p>11 to what the plaintiffs were alleging were 12:42:25PM</p> <p>12 false and misleading about various 12:42:27PM</p> <p>13 statements made by defendants during the 12:42:29PM</p> <p>14 class period. 12:42:31PM</p> <p>15 I then took those allegations 12:42:33PM</p> <p>16 as in the second interrogatory response 12:42:39PM</p> <p>17 and then I looked at the materials, the 12:42:42PM</p> <p>18 FDA briefing materials that were released 12:42:44PM</p> <p>19 on the morning of February 6th and I saw 12:42:47PM</p> <p>20 in the statistical reviewer's briefing 12:42:51PM</p> <p>21 document that all of the information that 12:42:54PM</p> <p>22 would be necessary to correct the alleged 12:42:57PM</p> <p>23 misrepresentations was contained therein. 12:43:00PM</p> <p>24 Q. And I guess I should ask my 12:43:02PM</p> <p>25 question more specifically. 12:43:04PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 definitive. I'm hesitating because I 12:44:13PM</p> <p>3 don't recall whether Dr. Fiorino makes 12:44:16PM</p> <p>4 reference to when that information was 12:44:19PM</p> <p>5 released. I just don't recall one way or 12:44:20PM</p> <p>6 the other. 12:44:22PM</p> <p>7 Q. So other than Bloomberg and 12:44:23PM</p> <p>8 possibly Dr. Fiorino, is there any other 12:44:24PM</p> <p>9 bases for your opinion that the corrective 12:44:27PM</p> <p>10 disclosure occurred on February 6th, 2001? 12:44:29PM</p> <p>11 A. There are also -- I mean, there 12:44:34PM</p> <p>12 was a news article the day where I believe 12:44:37PM</p> <p>13 an analyst, Ira Loss, with I think 12:44:40PM</p> <p>14 Washington Analysis, was quoted, and was 12:44:45PM</p> <p>15 quoted in the context of the hearing the 12:44:49PM</p> <p>16 next day. And my recollection is that the 12:44:51PM</p> <p>17 quote certainly implied that he was aware 12:44:55PM</p> <p>18 of materials that had been released that 12:44:59PM</p> <p>19 day. 12:45:01PM</p> <p>20 And there may have been other 12:45:02PM</p> <p>21 analysts that make reference to releases 12:45:04PM</p> <p>22 of information on February 6th. 12:45:06PM</p> <p>23 Q. And those are analysts that 12:45:07PM</p> <p>24 published their reports on the 7th and 8th 12:45:09PM</p> <p>25 though, correct? 12:45:11PM</p> |
| Page 191                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 193                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 What's the basis of your belief 12:43:06PM</p> <p>3 that the briefing materials were posted on 12:43:07PM</p> <p>4 February 6th, 2001? 12:43:09PM</p> <p>5 A. Well, I know that Bloomberg 12:43:12PM</p> <p>6 issued a release that morning around 10 12:43:18PM</p> <p>7 o'clock, on the morning of the 6th, and 12:43:21PM</p> <p>8 they had a link and still have a link, it 12:43:25PM</p> <p>9 is still a live link to the FDA briefing 12:43:27PM</p> <p>10 materials, and they were citing from the 12:43:30PM</p> <p>11 briefing materials at 10 a.m. in the 12:43:33PM</p> <p>12 morning, which indicates that that link 12:43:36PM</p> <p>13 was available prior to the Bloomberg 12:43:40PM</p> <p>14 article. 12:43:43PM</p> <p>15 I don't know precisely what 12:43:44PM</p> <p>16 time, but sometime prior to the 12:43:45PM</p> <p>17 publication of the Bloomberg article. 12:43:47PM</p> <p>18 Q. Other than the Bloomberg link, 12:43:48PM</p> <p>19 is there any other basis for your opinion 12:43:51PM</p> <p>20 that the corrective disclosure occurred on 12:43:52PM</p> <p>21 February 6th, 2001? 12:43:54PM</p> <p>22 MR. WANG: Objection to form. 12:44:06PM</p> <p>23 But go ahead. 12:44:08PM</p> <p>24 A. I don't recall whether -- as I 12:44:08PM</p> <p>25 sit here, I'm not aware of anything 12:44:11PM</p>                                           | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Well, again, the Ira Loss quote 12:45:12PM</p> <p>3 that I'm thinking of was not an analyst 12:45:14PM</p> <p>4 report per se, but it was a news story 12:45:16PM</p> <p>5 that came across the wires I believe on 12:45:18PM</p> <p>6 the afternoon of the 6th and he was quoted 12:45:21PM</p> <p>7 in that article. 12:45:24PM</p> <p>8 Q. But you are not aware of any 12:45:25PM</p> <p>9 analyst reports being published regarding 12:45:28PM</p> <p>10 the CLASS trial on February 6th; is that 12:45:29PM</p> <p>11 correct? 12:45:32PM</p> <p>12 A. That's correct. 12:45:32PM</p> <p>13 Q. And you are aware of multiple 12:45:32PM</p> <p>14 analyst reports being published on the 7th 12:45:34PM</p> <p>15 and 8th? 12:45:36PM</p> <p>16 MR. WANG: Objection to form. 12:45:38PM</p> <p>17 Vague and ambiguous. 12:45:39PM</p> <p>18 A. I am aware that -- again, the 12:45:39PM</p> <p>19 only thing I'm going on is the date on the 12:45:43PM</p> <p>20 analyst reports. Sometimes analyst 12:45:47PM</p> <p>21 reports might be distributed to 12:45:49PM</p> <p>22 institutional clients before they are 12:45:50PM</p> <p>23 released to the broader public. So we say 12:45:51PM</p> <p>24 not published on the 6th. I don't know 12:45:55PM</p> <p>25 firsthand whether some of that analyst 12:45:56PM</p>                                                    |

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| Page 194                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 196                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 information had not been distributed to 12:45:59PM</p> <p>3 clients of the respective firms. 12:46:02PM</p> <p>4 Q. But you don't have any evidence 12:46:04PM</p> <p>5 that the reports weren't -- that the 12:46:05PM</p> <p>6 reports were distributed on a day other 12:46:07PM</p> <p>7 than the date that they are dated; is that 12:46:09PM</p> <p>8 correct? 12:46:12PM</p> <p>9 MR. WANG: Objection to form. 12:46:12PM</p> <p>10 A. I don't have any factual 12:46:13PM</p> <p>11 evidence of it, that's correct. 12:46:14PM</p> <p>12 Q. Now, did you discount any 12:46:16PM</p> <p>13 evidence as unimportant in your 12:46:20PM</p> <p>14 determination that the corrective 12:46:22PM</p> <p>15 disclosure occurred on February 6th, 2001? 12:46:24PM</p> <p>16 MR. WANG: Objection. 12:46:26PM</p> <p>17 A. I'm sorry, did I discount -- 12:46:27PM</p> <p>18 Q. Did you discount any evidence 12:46:29PM</p> <p>19 to the contrary as unimportant in making 12:46:30PM</p> <p>20 your determination that the briefing 12:46:32PM</p> <p>21 documents were made available on February 12:46:36PM</p> <p>22 6th, 2001? 12:46:38PM</p> <p>23 MR. WANG: Objection. 12:46:39PM</p> <p>24 A. Well, as I sit here, I don't 12:46:40PM</p> <p>25 recall any contrary evidence that would 12:46:45PM</p>                                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 here, it seems perfectly consistent with 12:47:53PM</p> <p>3 what Mr. Philips said, because February 12:47:56PM</p> <p>4 6th is on or about February 7th, and in 12:47:57PM</p> <p>5 light of the Bloomberg story at 10 a.m. on 12:48:01PM</p> <p>6 the morning of February 6th, this does not 12:48:04PM</p> <p>7 cause me any hesitancy in assuming that 12:48:06PM</p> <p>8 the corrective disclosure was made on the 12:48:09PM</p> <p>9 morning of February 6th. 12:48:11PM</p> <p>10 Q. Other than the date on the 12:48:12PM</p> <p>11 Bloomberg link, have you done any other 12:48:13PM</p> <p>12 independent investigation to determine 12:48:15PM</p> <p>13 that the documents were actually posted on 12:48:17PM</p> <p>14 the Internet on February 6th as opposed to 12:48:20PM</p> <p>15 February 7th? 12:48:22PM</p> <p>16 A. Well, that is pretty compelling 12:48:24PM</p> <p>17 evidence from my point of view. But no, I 12:48:27PM</p> <p>18 haven't done any additional investigative 12:48:30PM</p> <p>19 work to determine that. 12:48:32PM</p> <p>20 Q. Now, is it fair to say that you 12:48:38PM</p> <p>21 considered analyst reports in coming up 12:48:41PM</p> <p>22 with your opinions in this case? 12:48:42PM</p> <p>23 A. More for texture and context. 12:48:44PM</p> <p>24 I don't think that analyst reports in and 12:48:48PM</p> <p>25 of themselves are probative of materiality 12:48:50PM</p> |
| Page 195                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 197                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 rise to the level that it would cause me 12:46:47PM</p> <p>3 to question the assumption, which seems 12:46:49PM</p> <p>4 rather unambiguous in light of the 12:46:53PM</p> <p>5 Bloomberg story. 12:46:54PM</p> <p>6 Q. Could you take a look back at 12:46:56PM</p> <p>7 Philips' affidavit, Exhibit 506. And 12:46:58PM</p> <p>8 specifically on the third page of the 12:47:10PM</p> <p>9 Philips affidavit, paragraph 8, where 12:47:12PM</p> <p>10 Mr. Philips, the representative of the 12:47:18PM</p> <p>11 FDA, states "The documents referred to in 12:47:20PM</p> <p>12 paragraphs A through C of paragraph 3" -- 12:47:23PM</p> <p>13 which are the three FDA reviewer 12:47:26PM</p> <p>14 reports -- "were posted on the FDA 12:47:28PM</p> <p>15 website," and then it gives the link, on 12:47:31PM</p> <p>16 or about February 7th, 2001. 12:47:33PM</p> <p>17 Do you see that? 12:47:35PM</p> <p>18 A. I see the language on or about 12:47:36PM</p> <p>19 February 7th, 2001. 12:47:38PM</p> <p>20 Q. And did you consider the FDA 12:47:40PM</p> <p>21 representative's affidavit in making your 12:47:42PM</p> <p>22 assessment that the corrective disclosure 12:47:45PM</p> <p>23 occurred on February 6th, 2001, not 12:47:47PM</p> <p>24 February 7th, 2001? 12:47:50PM</p> <p>25 A. Well, based on the language 12:47:51PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 or loss causation. But, you know, I do 12:48:55PM</p> <p>3 find it is often helpful to see what 12:48:58PM</p> <p>4 analysts are saying to provide a context 12:49:02PM</p> <p>5 for the actual empirical analysis. 12:49:04PM</p> <p>6 Q. And can you turn to paragraph 12:49:07PM</p> <p>7 36 of your report. 12:49:08PM</p> <p>8 And in paragraph 36, you say 12:49:28PM</p> <p>9 "In order to provide additional context 12:49:31PM</p> <p>10 and insight regarding how the market 12:49:32PM</p> <p>11 perceives certain announcements, I 12:49:34PM</p> <p>12 examined commentary by securities analysts 12:49:38PM</p> <p>13 who followed Pharmacia." Is that correct? 12:49:40PM</p> <p>14 A. That's correct. 12:49:42PM</p> <p>15 Q. And is it accurate that 12:49:42PM</p> <p>16 analysts can have an impact on the 12:49:45PM</p> <p>17 market's view of a particular company? 12:49:47PM</p> <p>18 A. They certainly can with respect 12:49:51PM</p> <p>19 to, you know, changes in projections, and 12:49:54PM</p> <p>20 there is some academic literature 12:50:01PM</p> <p>21 suggesting that what particular matters to 12:50:03PM</p> <p>22 the market are changes in their target 12:50:07PM</p> <p>23 prices for the companies. 12:50:09PM</p> <p>24 So yeah, as a general matter, 12:50:13PM</p> <p>25 what analysts say can be informative to 12:50:14PM</p>                                                      |

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| <p style="text-align: right;">Page 198</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 the market. 12:50:17PM</p> <p>3 Q. And you referenced the camera 12:50:18PM</p> <p>4 factors earlier? 12:50:20PM</p> <p>5 A. Correct. 12:50:22PM</p> <p>6 Q. What are the camera factors? 12:50:22PM</p> <p>7 A. Well, the camera factors are 12:50:23PM</p> <p>8 criteria used by one court to determine 12:50:26PM</p> <p>9 whether or not the market for a security 12:50:33PM</p> <p>10 is efficient. 12:50:35PM</p> <p>11 Q. And one of those camera factors 12:50:36PM</p> <p>12 is whether or not there is analyst 12:50:39PM</p> <p>13 coverage; is that correct? 12:50:42PM</p> <p>14 A. I think not only -- and again, 12:50:42PM</p> <p>15 I'm not a lawyer -- but not only whether 12:50:44PM</p> <p>16 there is analyst coverage, but I think it 12:50:46PM</p> <p>17 is the number of analysts that under the 12:50:48PM</p> <p>18 camera court matter. 12:50:51PM</p> <p>19 Q. And here there are -- you are 12:50:52PM</p> <p>20 not disputing the efficiency of the 12:50:56PM</p> <p>21 market, correct? 12:50:57PM</p> <p>22 A. Say again. 12:50:58PM</p> <p>23 Q. You are not disputing that the 12:50:58PM</p> <p>24 market for Pharmacia stock in 2000-2001 12:51:00PM</p> <p>25 was efficient, correct? 12:51:02PM</p>                                                                                                                         | <p style="text-align: right;">Page 200</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 information quickly? 12:51:53PM</p> <p>3 MR. WANG: Objection. Asked 12:51:54PM</p> <p>4 and answered. 12:51:55PM</p> <p>5 A. Not so much that in my opinion. 12:51:56PM</p> <p>6 I think Dr. Feinstein and I agree a bit on 12:51:58PM</p> <p>7 another issue, where in talking about why 12:52:01PM</p> <p>8 the analysts didn't change their 12:52:03PM</p> <p>9 projections, I think in his deposition 12:52:05PM</p> <p>10 made reference to the fact that they are 12:52:07PM</p> <p>11 sluggish in that, more sluggish perhaps 12:52:09PM</p> <p>12 than the market, I forget exactly how he 12:52:12PM</p> <p>13 put it. 12:52:16PM</p> <p>14 You know, I view the analysts' 12:52:16PM</p> <p>15 commentary more as a surrogate for how the 12:52:19PM</p> <p>16 market is perceiving information. But it 12:52:21PM</p> <p>17 is not as if -- and this is probably where 12:52:24PM</p> <p>18 we disagree -- it is not as if the market 12:52:26PM</p> <p>19 just waits for the analyst to weigh in 12:52:28PM</p> <p>20 before they start buying and selling 12:52:30PM</p> <p>21 shares. 12:52:32PM</p> <p>22 Q. Well, that may be true, the 12:52:32PM</p> <p>23 start of that process may precede analyst 12:52:35PM</p> <p>24 reports, but analyst reports can certainly 12:52:39PM</p> <p>25 influence investors' decision to buy or 12:52:41PM</p>                                                           |
| <p style="text-align: right;">Page 199</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. That's correct. 12:51:03PM</p> <p>3 Q. And part of the basis for that 12:51:03PM</p> <p>4 conclusion is the fact that there is 12:51:05PM</p> <p>5 significant analyst coverage, correct? 12:51:07PM</p> <p>6 A. No. I mean, I consistently, 12:51:09PM</p> <p>7 when asked about the camera factors, say 12:51:11PM</p> <p>8 that the only one that really is 12:51:14PM</p> <p>9 determinative of market efficiency is the 12:51:15PM</p> <p>10 last one, which is whether new information 12:51:17PM</p> <p>11 is reflected in a company's security price 12:51:19PM</p> <p>12 and how quickly does it get reflected in 12:51:22PM</p> <p>13 the security's price. 12:51:24PM</p> <p>14 The other factors, including 12:51:26PM</p> <p>15 number of analysts, are correlated with 12:51:29PM</p> <p>16 market efficiency but not determinative in 12:51:32PM</p> <p>17 and of itself. 12:51:34PM</p> <p>18 So, for example, it is 12:51:35PM</p> <p>19 perfectly conceivable to me that you could 12:51:36PM</p> <p>20 have some companies where there are no 12:51:38PM</p> <p>21 analysts and yet the market will react 12:51:40PM</p> <p>22 quickly to new information. 12:51:43PM</p> <p>23 Q. And analyst coverage is 12:51:46PM</p> <p>24 correlated with market efficiency because 12:51:47PM</p> <p>25 the analysts can help disseminate 12:51:49PM</p> | <p style="text-align: right;">Page 201</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 sell stock; is that correct? 12:52:44PM</p> <p>3 A. As I indicated, it depends on 12:52:45PM</p> <p>4 what you mean by the analyst reports. The 12:52:48PM</p> <p>5 recommendations have been found to be 12:52:51PM</p> <p>6 associated with significant stock price 12:52:53PM</p> <p>7 reactions, and so when an analyst 12:52:56PM</p> <p>8 downgrade or upgrade stocks, on average, 12:53:00PM</p> <p>9 it doesn't mean all the time, but on 12:53:02PM</p> <p>10 average there tend to be price reactions. 12:53:05PM</p> <p>11 And, as I mentioned, more 12:53:07PM</p> <p>12 recent research is finding that what 12:53:08PM</p> <p>13 particular matters in the recommendation 12:53:10PM</p> <p>14 are the target price recommendations. 12:53:13PM</p> <p>15 Q. And the whole premise of an 12:53:14PM</p> <p>16 analyst's job, if they weren't -- if the 12:53:18PM</p> <p>17 information they were communicating was 12:53:22PM</p> <p>18 not impacting investors' decisions to buy 12:53:23PM</p> <p>19 and sell, what else would they -- what 12:53:26PM</p> <p>20 would be the point of having analysts? 12:53:28PM</p> <p>21 MR. WANG: Objection. 12:53:31PM</p> <p>22 A. Well, as I indicated before, 12:53:32PM</p> <p>23 analysts play multiple roles. I mean, one 12:53:34PM</p> <p>24 is the report, and that's a big part. But 12:53:36PM</p> <p>25 they also, you know, they speak at 12:53:38PM</p> |

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| Page 202                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 204                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 conferences and they engage in marketing. 12:53:40PM</p> <p>3 So we ask what is the point of having 12:53:43PM</p> <p>4 analysts. I think they play multiple 12:53:46PM</p> <p>5 roles within these firms. 12:53:48PM</p> <p>6 Q. But one of the roles is to get 12:53:49PM</p> <p>7 information to market participants to help 12:53:51PM</p> <p>8 them make a decision about whether to buy 12:53:53PM</p> <p>9 or sell the security the analyst is 12:53:55PM</p> <p>10 covering; is that correct? 12:53:57PM</p> <p>11 A. As a general matter, that's 12:53:58PM</p> <p>12 correct. 12:54:00PM</p> <p>13 Q. And can you turn back to 12:54:00PM</p> <p>14 Exhibit 504, that's your AOL report and 12:54:04PM</p> <p>15 specifically page 20, paragraph 73. 12:54:32PM</p> <p>16 A. I'm sorry, which paragraph? 12:54:43PM</p> <p>17 Q. If you could turn to page 20, 12:54:44PM</p> <p>18 paragraph 73. 12:54:46PM</p> <p>19 And in paragraph 73, you wrote 12:54:48PM</p> <p>20 "As the analyst reports and public press 12:54:52PM</p> <p>21 indicate the market was continuing to 12:54:55PM</p> <p>22 evaluate the impact of the earnings 12:54:58PM</p> <p>23 announcement and the SEC investigation, it 12:55:00PM</p> <p>24 is appropriate to measure the impact of 12:55:03PM</p> <p>25 this information over the course of both 12:55:05PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And you considered these 12:56:22PM</p> <p>3 analyst reports in developing your opinion 12:56:23PM</p> <p>4 in this case? 12:56:24PM</p> <p>5 A. That is correct. 12:56:25PM</p> <p>6 Q. Now, I want to show you what 12:56:27PM</p> <p>7 I'm marking as Plaintiffs' Exhibit 509. 12:56:31PM</p> <p>8 (Plaintiffs' Exhibit 509 marked 12:56:34PM</p> <p>9 for identification.) 12:56:36PM</p> <p>10 MR. WANG: When you are 12:56:55PM</p> <p>11 finished with this document, do you want 12:56:55PM</p> <p>12 to break for lunch? 12:56:57PM</p> <p>13 MR. SAHAM: Sure, let's just 12:56:58PM</p> <p>14 finish this document. 12:57:00PM</p> <p>15 MR. WANG: That would be 12:57:00PM</p> <p>16 perfect. 12:57:01PM</p> <p>17 Q. And for the record, Exhibit 509 12:57:01PM</p> <p>18 is a Bear Stearns analyst report dated 12:57:03PM</p> <p>19 February 7th, 2001 and it bears Bates 12:57:05PM</p> <p>20 numbers BEAR 00023 through 25. 12:57:08PM</p> <p>21 And is this one of the analyst 12:57:14PM</p> <p>22 reports you considered in this case? 12:57:17PM</p> <p>23 A. It is, yes. 12:57:18PM</p> <p>24 Q. And the report is dated 12:57:19PM</p> <p>25 February 7th, 2001, but it has the closing 12:57:21PM</p> |
| Page 203                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 205                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 July 25 and July 26, 2002." 12:55:08PM</p> <p>3 You wrote that in your report 12:55:11PM</p> <p>4 on October 20th, 2006, correct? 12:55:12PM</p> <p>5 A. That's correct. 12:55:16PM</p> <p>6 Q. Now, turning back to your 12:55:17PM</p> <p>7 report in this case, on paragraph 37 on 12:55:21PM</p> <p>8 page 10 -- I'm sorry for making you go 12:55:25PM</p> <p>9 back and forth. 12:55:35PM</p> <p>10 A. Okay. 12:55:40PM</p> <p>11 Q. You wrote "Hence, the views of 12:55:40PM</p> <p>12 security analysts provide additional 12:55:42PM</p> <p>13 context that can inform an opinion as to 12:55:44PM</p> <p>14 whether information is material." 12:55:47PM</p> <p>15 You wrote that, correct? 12:55:49PM</p> <p>16 A. I did. 12:55:49PM</p> <p>17 Q. And you believe that to be 12:55:50PM</p> <p>18 correct? 12:55:51PM</p> <p>19 A. That's correct. 12:55:51PM</p> <p>20 Q. And also in your report you 12:55:52PM</p> <p>21 have an exhibit here, which is Exhibit 2A, 12:55:56PM</p> <p>22 and it is a 12-page exhibit. And that 12:56:02PM</p> <p>23 exhibit is entitled Analyst Reports 12:56:16PM</p> <p>24 Considered; is that correct? 12:56:19PM</p> <p>25 A. That is correct. 12:56:21PM</p>                                                                                                                                            | <p>1 LEHN - CONFIDENTIAL</p> <p>2 price of \$56.13 up at the top. Do you see 12:57:25PM</p> <p>3 that? 12:57:29PM</p> <p>4 A. I do. 12:57:29PM</p> <p>5 Q. Does this indicate that the 12:57:29PM</p> <p>6 report was not published until sometime 12:57:30PM</p> <p>7 after the close of trading on February 12:57:34PM</p> <p>8 7th? 12:57:36PM</p> <p>9 A. I believe that's correct. I 12:57:38PM</p> <p>10 believe that was the closing price on the 12:57:41PM</p> <p>11 7th. 12:57:43PM</p> <p>12 Q. And when does the New York 12:57:43PM</p> <p>13 Stock Exchange close? 12:57:46PM</p> <p>14 A. At 4 p.m. eastern time. 12:57:46PM</p> <p>15 Q. So this report has to have been 12:57:48PM</p> <p>16 written and disseminated at some point 12:57:52PM</p> <p>17 after 4 o'clock on the 7th; is that 12:57:54PM</p> <p>18 correct? 12:57:57PM</p> <p>19 MR. WANG: Objection. 12:57:57PM</p> <p>20 Q. Because it indicates the 12:57:58PM</p> <p>21 closing price? 12:58:00PM</p> <p>22 MR. WANG: Compound. 12:58:02PM</p> <p>23 A. Again, I don't know factually. 12:58:02PM</p> <p>24 But I certainly believe that to be the 12:58:04PM</p> <p>25 case. 12:58:06PM</p>                                                                                  |

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| <p style="text-align: right;">Page 206</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Fair enough. I'll take that. 12:58:06PM</p> <p>3 And there is certain 12:58:08PM</p> <p>4 information in here about Pharmacia 12:58:11PM</p> <p>5 Corporation, in fact, it is in the title, 12:58:13PM</p> <p>6 Pharmacia Corp.; is that correct? 12:58:15PM</p> <p>7 A. That's correct. 12:58:17PM</p> <p>8 Q. And if you look down under the 12:58:17PM</p> <p>9 Key Points, and then there is like three 12:58:22PM</p> <p>10 stars next to each of the key points, do 12:58:25PM</p> <p>11 you see that on the first page? 12:58:27PM</p> <p>12 A. I do. 12:58:28PM</p> <p>13 Q. And the second key point says 12:58:28PM</p> <p>14 "In reviewing Celebrex, consensus among 12:58:35PM</p> <p>15 the Advisory Panel members was that 12:58:38PM</p> <p>16 PHA/PFE's Celebrex did not establish a 12:58:45PM</p> <p>17 meaningful safety advantage in comparison 12:58:47PM</p> <p>18 to NSAIDs (ibuprofen and diclofenac)." 12:58:50PM</p> <p>19 Now, would you agree that that 12:58:55PM</p> <p>20 is negative information for Pharmacia 12:58:57PM</p> <p>21 Corporation? 12:58:59PM</p> <p>22 MR. WANG: Objection. 12:59:00PM</p> <p>23 A. Well, I think to be cautious I 12:59:03PM</p> <p>24 would go as far as to say that it doesn't 12:59:06PM</p> <p>25 appear to be positive, and the question 12:59:09PM</p> | <p style="text-align: right;">Page 208</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 neutral in the sense that this was sort of 01:00:03PM</p> <p>3 already known. In a sense, that is not 01:00:07PM</p> <p>4 new information. 01:00:12PM</p> <p>5 Q. We ruled out it is not good 01:00:13PM</p> <p>6 news, though, we are on the same page 01:00:15PM</p> <p>7 there, right? 01:00:17PM</p> <p>8 A. It doesn't appear to be 01:00:17PM</p> <p>9 positive news, that's correct. 01:00:18PM</p> <p>10 Q. And you just personally sitting 01:00:20PM</p> <p>11 here, would you characterize it as bad 01:00:21PM</p> <p>12 news? 01:00:23PM</p> <p>13 MR. WANG: Objection to form. 01:00:24PM</p> <p>14 Q. The fact that they didn't 01:00:27PM</p> <p>15 establish a meaningful safety advantage in 01:00:28PM</p> <p>16 comparison to ibuprofen and diclofenac, 01:00:30PM</p> <p>17 would you characterize that as negative 01:00:33PM</p> <p>18 news for Pharmacia? 01:00:35PM</p> <p>19 MR. WANG: Objection. Asked 01:00:36PM</p> <p>20 and answered. 01:00:37PM</p> <p>21 A. But, again, I'm not sure it is 01:00:37PM</p> <p>22 news. You are asking is it negative news. 01:00:39PM</p> <p>23 It may not be news. The briefing 01:00:41PM</p> <p>24 materials on the morning of February 6th 01:00:43PM</p> <p>25 had the statistical data that would allow 01:00:47PM</p>                                                                                                                      |
| <p style="text-align: right;">Page 207</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 is, you know, is it negative or how 12:59:10PM</p> <p>3 negative. It may be. 12:59:13PM</p> <p>4 Q. But you would agree with me it 12:59:15PM</p> <p>5 is not good news? 12:59:17PM</p> <p>6 A. I would agree that it is not 12:59:19PM</p> <p>7 positive news. 12:59:23PM</p> <p>8 Q. So if it is not positive news, 12:59:24PM</p> <p>9 it is -- the only other alternative is bad 12:59:27PM</p> <p>10 news? 12:59:29PM</p> <p>11 A. Or neutral. 12:59:30PM</p> <p>12 Q. So it is either neutral or bad. 12:59:31PM</p> <p>13 In reading this, could you view 12:59:33PM</p> <p>14 it as neutral that they did not establish 12:59:35PM</p> <p>15 a meaningful safety advantage? Isn't the 12:59:37PM</p> <p>16 whole point of the CLASS trial to 12:59:40PM</p> <p>17 establish a meaningful safety advantage 12:59:41PM</p> <p>18 that your product is better or safer than 12:59:43PM</p> <p>19 the ones it is being compared to? Isn't 12:59:45PM</p> <p>20 that the point of CLASS? 12:59:47PM</p> <p>21 A. Again, it depends on the 12:59:54PM</p> <p>22 context in which you are asking, is it 12:59:55PM</p> <p>23 positive, negative or neutral. And in the 12:59:57PM</p> <p>24 context of the total mix of information in 12:59:59PM</p> <p>25 the market at that point, it could be 01:00:01PM</p>               | <p style="text-align: right;">Page 209</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 investors, analysts, or anyone else to 01:00:51PM</p> <p>3 reach their judgment as to this, and this 01:00:55PM</p> <p>4 is simply describing the feeling among the 01:00:58PM</p> <p>5 Advisory Panel members. 01:01:01PM</p> <p>6 And if this was after the close 01:01:03PM</p> <p>7 on the 7th, which seems a reasonable 01:01:06PM</p> <p>8 presumption, then the market already knew 01:01:10PM</p> <p>9 the Advisory Panel decision as of this 01:01:14PM</p> <p>10 point in time. 01:01:17PM</p> <p>11 Q. And you referenced earlier in 01:01:17PM</p> <p>12 the day that the Vioxx reports were posted 01:01:19PM</p> <p>13 on the Internet on the morning of February 01:01:22PM</p> <p>14 7th; is that correct? 01:01:24PM</p> <p>15 A. That's correct. 01:01:25PM</p> <p>16 Q. And looking at the third set of 01:01:26PM</p> <p>17 key points, the last sentence, the Bear 01:01:29PM</p> <p>18 Stearns analyst -- the three Bear Stearns 01:01:32PM</p> <p>19 analysts who co-authored this report wrote 01:01:35PM</p> <p>20 "Because Vioxx has a less favorable CV 01:01:39PM</p> <p>21 side effect profile, the possibility 01:01:43PM</p> <p>22 exists that a warning informing physicians 01:01:45PM</p> <p>23 of the CV risk could be added to Vioxx's 01:01:48PM</p> <p>24 label. A negative Vioxx label revision 01:01:52PM</p> <p>25 would provide Pharmacia/Pfizer a major 01:01:55PM</p> |

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| <p style="text-align: right;">Page 210</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 competitive marketing advantage." 01:02:01PM</p> <p>3 Do you see that? 01:02:02PM</p> <p>4 A. I do see that. 01:02:03PM</p> <p>5 Q. And is it fair to say that 01:02:04PM</p> <p>6 would be good news for Pharmacia at least 01:02:05PM</p> <p>7 as characterized by the three Bear Stearns 01:02:07PM</p> <p>8 analysts? 01:02:10PM</p> <p>9 MR. WANG: Objection. 01:02:11PM</p> <p>10 A. When you say "that," meaning 01:02:12PM</p> <p>11 what? 01:02:14PM</p> <p>12 Q. The sentence that I just read 01:02:14PM</p> <p>13 to you that Pharmacia and Pfizer would 01:02:15PM</p> <p>14 have a major competitive marketing 01:02:17PM</p> <p>15 advantage. 01:02:19PM</p> <p>16 MR. WANG: Objection. 01:02:20PM</p> <p>17 Q. Would you characterize that as 01:02:20PM</p> <p>18 good news or bad news? 01:02:21PM</p> <p>19 A. Again, is what you are asking 01:02:23PM</p> <p>20 me to characterize the opinion of Bear 01:02:25PM</p> <p>21 Stearns or if we simply accept the fact 01:02:28PM</p> <p>22 that it was a major competitive marketing 01:02:30PM</p> <p>23 advantage, is that good or bad? 01:02:34PM</p> <p>24 The fact that Bear Stearns is 01:02:36PM</p> <p>25 saying it in and of itself doesn't say 01:02:38PM</p>                                                                                     | <p style="text-align: right;">Page 212</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 COX-2 Drugs for Respective Companies, and 01:03:41PM</p> <p>3 it is in U.S. millions of dollars. Do you 01:03:44PM</p> <p>4 see that? 01:03:47PM</p> <p>5 A. I do. 01:03:47PM</p> <p>6 Q. And on the left-hand column it 01:03:47PM</p> <p>7 has the company, you know, Pharmacia, 01:03:50PM</p> <p>8 Pfizer and Merck; do you see that? 01:03:52PM</p> <p>9 A. I do. 01:03:54PM</p> <p>10 Q. And then under that it has the 01:03:54PM</p> <p>11 Percentage of Pharma Revenues. Do you see 01:03:56PM</p> <p>12 that? 01:03:59PM</p> <p>13 A. I do. 01:03:59PM</p> <p>14 Q. And here it appears that the 01:04:00PM</p> <p>15 Bear Stearns analysts are breaking out the 01:04:03PM</p> <p>16 percentage of revenue for just the 01:04:06PM</p> <p>17 pharmaceutical portions of each of these 01:04:09PM</p> <p>18 three companies' business; is that 01:04:12PM</p> <p>19 correct? 01:04:13PM</p> <p>20 A. It appears to be. 01:04:13PM</p> <p>21 Q. And that would be revenues that 01:04:14PM</p> <p>22 would be not the entire company's revenue, 01:04:17PM</p> <p>23 but just the company's 01:04:20PM</p> <p>24 pharmaceutical-based revenues; is that 01:04:23PM</p> <p>25 correct? 01:04:24PM</p>                                                                                                          |
| <p style="text-align: right;">Page 211</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 that is good news because the market might 01:02:41PM</p> <p>3 be discounting Bear Stearns' opinion. 01:02:43PM</p> <p>4 Q. These three Bear Stearns 01:02:43PM</p> <p>5 analysts in this February 7th, 2001 report 01:02:47PM</p> <p>6 are characterizing the Vioxx CV side 01:02:50PM</p> <p>7 effects as positive news for Pharmacia. 01:02:54PM</p> <p>8 That is their opinion, correct? 01:02:56PM</p> <p>9 MR. WANG: Objection. 01:02:58PM</p> <p>10 Misstates the document. 01:02:58PM</p> <p>11 A. It says -- I think it is saying 01:02:59PM</p> <p>12 that if there is a negative Vioxx label 01:03:03PM</p> <p>13 revision, that would provide Pharmacia 01:03:05PM</p> <p>14 with a major competitive marketing 01:03:09PM</p> <p>15 advantage. 01:03:11PM</p> <p>16 Q. And a major competitive 01:03:11PM</p> <p>17 marketing advantage would be good news for 01:03:13PM</p> <p>18 Pharmacia, correct? 01:03:15PM</p> <p>19 A. According to what Bear Stearns 01:03:17PM</p> <p>20 is suggesting in this one part of their 01:03:20PM</p> <p>21 report, that would presumably be positive 01:03:25PM</p> <p>22 news. 01:03:28PM</p> <p>23 Q. And then looking at the last 01:03:29PM</p> <p>24 page of Exhibit 509, there's a box or a 01:03:31PM</p> <p>25 table labeled Financial Importance of 01:03:37PM</p> | <p style="text-align: right;">Page 213</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I would have to read how 01:04:24PM</p> <p>3 exactly they calculated it. But I presume 01:04:27PM</p> <p>4 that to be the case. 01:04:29PM</p> <p>5 Q. And Pharmacia did have a 01:04:30PM</p> <p>6 substantial agriculture and chemicals 01:04:31PM</p> <p>7 business; is that correct? 01:04:34PM</p> <p>8 A. They had an agriculture and 01:04:35PM</p> <p>9 chemicals business. In terms of 01:04:38PM</p> <p>10 substantial, I don't know if you are 01:04:42PM</p> <p>11 referring to value or sales. But they did 01:04:43PM</p> <p>12 have an ag and chemical business. 01:04:46PM</p> <p>13 Q. And Dr. Feinstein removed that 01:04:48PM</p> <p>14 from his regression in order to get a 01:04:50PM</p> <p>15 picture of their pharmaceutical business? 01:04:53PM</p> <p>16 MR. WANG: I object. 01:04:56PM</p> <p>17 A. Inappropriately so. 01:04:56PM</p> <p>18 Q. I understand you have a 01:04:58PM</p> <p>19 disagreement about that, correct? 01:04:59PM</p> <p>20 A. Yes. 01:05:01PM</p> <p>21 Q. But these analysts, these three 01:05:01PM</p> <p>22 Bear Stearns analysts, seem to be doing 01:05:03PM</p> <p>23 the same thing that Dr. Feinstein did, 01:05:05PM</p> <p>24 they broke out, when they were looking at 01:05:07PM</p> <p>25 the percentage of revenues, they just 01:05:09PM</p> |

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## CONFIDENTIAL

| Page 214                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 216                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 looked at it as a percentage of the 01:05:10PM</p> <p>3 pharmaceuticals business, correct? 01:05:12PM</p> <p>4 MR. WANG: Objection. 01:05:14PM</p> <p>5 A. Again, I would have to go back 01:05:14PM</p> <p>6 and look at their calculations. But it 01:05:17PM</p> <p>7 appears that they are doing that. 01:05:19PM</p> <p>8 Q. And the reason -- what they are 01:05:20PM</p> <p>9 communicating here in this box is they are 01:05:23PM</p> <p>10 trying to show the percentage of 01:05:25PM</p> <p>11 pharmaceutical-based revenues derived from 01:05:27PM</p> <p>12 Vioxx, Pharmacia and Pfizer's sale of 01:05:30PM</p> <p>13 COX-2s, correct? 01:05:36PM</p> <p>14 A. That appears to be what they 01:05:37PM</p> <p>15 are doing. 01:05:39PM</p> <p>16 Q. And here, Merck, you understand 01:05:40PM</p> <p>17 Merck was the maker of Vioxx, correct? 01:05:42PM</p> <p>18 A. Correct. 01:05:45PM</p> <p>19 Q. And in 2000, about 10.7 of 01:05:45PM</p> <p>20 Merck's pharmaceutical sales were derived 01:05:48PM</p> <p>21 from Vioxx sales, is that correct, 01:05:50PM</p> <p>22 according to this box or table? 01:05:54PM</p> <p>23 A. According to the table, that's 01:05:55PM</p> <p>24 right. 01:05:57PM</p> <p>25 Q. And the analysts were 01:05:57PM</p>                                                                                               | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the numbers. You could compare the 01:06:50PM</p> <p>3 percentages of COX-2 derived 01:06:54PM</p> <p>4 pharmaceutical revenues between Merck, 01:06:57PM</p> <p>5 Pfizer and Pharmacia from looking at this 01:07:00PM</p> <p>6 table? 01:07:02PM</p> <p>7 A. Correct. 01:07:02PM</p> <p>8 MR. SAHAM: Okay, we can take a 01:07:23PM</p> <p>9 break now. 01:07:25PM</p> <p>10 THE VIDEOGRAPHER: The time is 01:07:26PM</p> <p>11 approximately 1:07 p.m. This is the end 01:07:27PM</p> <p>12 of media number three. We are off the 01:07:30PM</p> <p>13 record. 01:07:32PM</p> <p>14 (Luncheon recess: 1:07 p.m.) 01:07:32PM</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Page 215                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 217                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 estimating that approximately 15.4 percent 01:05:58PM</p> <p>3 of Merck's pharmaceutical revenues would 01:06:00PM</p> <p>4 be derived from the sale of Vioxx in 2001; 01:06:03PM</p> <p>5 is that correct? 01:06:07PM</p> <p>6 A. It appears to be the case. 01:06:08PM</p> <p>7 Q. And for 2002 they were 01:06:09PM</p> <p>8 estimating that the percentage of 01:06:10PM</p> <p>9 pharmaceutical revenues that Merck would 01:06:14PM</p> <p>10 derive from Vioxx would rise to 17.1 01:06:16PM</p> <p>11 percent; is that correct? 01:06:19PM</p> <p>12 A. That appears to be correct. 01:06:20PM</p> <p>13 Q. And then it also breaks out the 01:06:21PM</p> <p>14 numbers for Pharmacia and Pfizer, what 01:06:23PM</p> <p>15 percentage of their revenues would come 01:06:26PM</p> <p>16 from COX-2s in those three years, or were 01:06:27PM</p> <p>17 estimated to be expected to come from 01:06:31PM</p> <p>18 COX-2s in those three years? 01:06:34PM</p> <p>19 A. I'm sorry, was that a question? 01:06:36PM</p> <p>20 Q. It is also estimating the same 01:06:37PM</p> <p>21 proportion of pharmaceutical revenues that 01:06:39PM</p> <p>22 were expected to be derived from COX-2s 01:06:41PM</p> <p>23 for Pharmacia and Pfizer as well, correct? 01:06:44PM</p> <p>24 A. Apparently. 01:06:46PM</p> <p>25 Q. And, you know, the numbers are 01:06:47PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 AFTERNOON SESSION 01:07:32PM</p> <p>3 1:54 p.m. 01:07:32PM</p> <p>4 KENNETH M. LEHN, resumed. 01:53:57PM</p> <p>5 THE VIDEOGRAPHER: The time is 01:53:57PM</p> <p>6 approximately 1:54 p.m. This is the 01:54:24PM</p> <p>7 beginning of media number four. We are on 01:54:27PM</p> <p>8 the record. 01:54:29PM</p> <p>9 CONTINUED EXAMINATION 01:54:29PM</p> <p>10 BY MR. SAHAM: 01:54:30PM</p> <p>11 Q. Dr. Lehn, can you turn back to 01:54:30PM</p> <p>12 Exhibit 11 of your report, which we have 01:54:33PM</p> <p>13 marked as Exhibit 500, and this is the 01:54:34PM</p> <p>14 Pharmacia intraday trading for February 01:54:41PM</p> <p>15 8th. 01:54:43PM</p> <p>16 A. Okay. 01:54:45PM</p> <p>17 Q. And you have that box there at 01:54:45PM</p> <p>18 about 3:05 p.m. or 3:06 p.m. where you say 01:54:54PM</p> <p>19 "a federal panel recommended that Merck 01:54:57PM</p> <p>20 would get a label change"? 01:55:00PM</p> <p>21 A. That's correct. 01:55:02PM</p> <p>22 Q. And what was the basis for your 01:55:03PM</p> <p>23 opinion that the announcement regarding 01:55:05PM</p> <p>24 the recommendation occurred at 3:06 p.m.? 01:55:08PM</p> <p>25 A. Well, that's certainly when the 01:55:13PM</p> |

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| Page 218                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 220                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 news came across the Dow Jones newswire. 01:55:15PM</p> <p>3 Q. Did you discount any other 01:55:20PM</p> <p>4 media as unimportant or somehow inaccurate 01:55:21PM</p> <p>5 on the timing of this information? 01:55:25PM</p> <p>6 MR. WANG: Objection to form. 01:55:28PM</p> <p>7 A. No, I did not. 01:55:29PM</p> <p>8 Q. Did you consider the Washington 01:55:29PM</p> <p>9 AP "Scientists Advise on New Drug," that 01:55:33PM</p> <p>10 is timed at 12:51, did you consider that 01:55:41PM</p> <p>11 news report? 01:55:45PM</p> <p>12 A. I considered it. As I sit 01:55:46PM</p> <p>13 here, I know Dr. Feinstein raises that. 01:55:49PM</p> <p>14 But I have to refresh my memory as to the 01:55:52PM</p> <p>15 contents of that. 01:55:54PM</p> <p>16 Q. Let me show you what I'm 01:55:55PM</p> <p>17 marking as Plaintiffs' Exhibit 510. If 01:55:56PM</p> <p>18 you would take a look at that. 01:55:58PM</p> <p>19 (Plaintiffs' Exhibit 510 marked 01:56:00PM</p> <p>20 for identification.) 01:56:02PM</p> <p>21 (Witness perusing document.) 01:56:06PM</p> <p>22 Q. And, for the record, 01:56:10PM</p> <p>23 Plaintiffs' Exhibit 510 is a one-page AP 01:56:11PM</p> <p>24 wire, "Scientists Advise On New Drug 01:56:17PM</p> <p>25 Vioxx," February 8, 2001, and the time 01:56:21PM</p>                                                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 was more of an informal vote. 01:57:32PM</p> <p>3 Q. But to the extent this reporter 01:57:35PM</p> <p>4 or other individuals at the Advisory 01:57:39PM</p> <p>5 Committee hearing learned earlier in the 01:57:43PM</p> <p>6 day that that vote was going to occur, 01:57:47PM</p> <p>7 couldn't that have been impacting -- allow 01:57:50PM</p> <p>8 the market to absorb that information? 01:57:54PM</p> <p>9 MR. WANG: Objection to form. 01:57:57PM</p> <p>10 A. It could. And if you back up, 01:57:58PM</p> <p>11 if you look at Exhibit 11, you will see 01:58:00PM</p> <p>12 that around 12:51 there is a point at 01:58:02PM</p> <p>13 which it is higher than it was later in 01:58:08PM</p> <p>14 the day, so the decline subsequently was 01:58:10PM</p> <p>15 actually even larger than it was based on 01:58:13PM</p> <p>16 the 3:06 data. 01:58:16PM</p> <p>17 Q. But in Exhibit 11 you indicate 01:58:18PM</p> <p>18 that this information reached the market 01:58:20PM</p> <p>19 at 3:06, not 12:51; is that correct? 01:58:23PM</p> <p>20 A. Well, this particular 01:58:26PM</p> <p>21 information did reach the market at 3:06 01:58:28PM</p> <p>22 from the Dow Jones News Service. 01:58:31PM</p> <p>23 Q. But the fact that this article 01:58:33PM</p> <p>24 reports using past tense that the advisory 01:58:35PM</p> <p>25 committee had decided and that the 01:58:37PM</p> |
| Page 219                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 221                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 stamp is 12:51 and 32 seconds. 01:56:25PM</p> <p>3 And the first sentence of the 01:56:30PM</p> <p>4 article -- well, it says "Washington AP" 01:56:31PM</p> <p>5 and then it says "The arthritis drug Vioxx 01:56:35PM</p> <p>6 appears to cause fewer ulcers than the 01:56:38PM</p> <p>7 older painkiller naproxen and its label 01:56:41PM</p> <p>8 should say so, the government's scientific 01:56:43PM</p> <p>9 advisors decided Thursday in a boon for 01:56:45PM</p> <p>10 maker Merck &amp; Company." 01:56:48PM</p> <p>11 And then if you drop down to 01:56:50PM</p> <p>12 the third full paragraph, it says "The 01:56:51PM</p> <p>13 recommendation comes as Vioxx and 01:56:55PM</p> <p>14 competitor Celebrex, two popular arthritis 01:56:58PM</p> <p>15 painkillers, jockey for sales." 01:57:01PM</p> <p>16 Do you see that? 01:57:04PM</p> <p>17 A. That's correct. 01:57:05PM</p> <p>18 Q. Does it appear that information 01:57:05PM</p> <p>19 reached the market at 12:51 p.m., that the 01:57:09PM</p> <p>20 scientific advisors had decided to 01:57:13PM</p> <p>21 recommend the label change for Vioxx; 01:57:20PM</p> <p>22 isn't that what this newspaper article 01:57:26PM</p> <p>23 appears to indicate? 01:57:27PM</p> <p>24 A. It is. My recollection is it 01:57:28PM</p> <p>25 wasn't the actual vote at that point, it 01:57:30PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 recommendation comes, referring to it in 01:58:38PM</p> <p>3 past tense, does this impact your opinion 01:58:41PM</p> <p>4 in any way? 01:58:44PM</p> <p>5 MR. WANG: Objection, misstates 01:58:46PM</p> <p>6 the document. 01:58:49PM</p> <p>7 A. When you say "this article," 01:58:50PM</p> <p>8 meaning which article? 01:58:52PM</p> <p>9 Q. What I have marked as Exhibit 01:58:52PM</p> <p>10 510, the Washington Post AP article dated 01:58:52PM</p> <p>11 -- or time stamped 12:51 on February 8th, 01:58:53PM</p> <p>12 2001. 01:58:56PM</p> <p>13 A. When you say changed my 01:58:56PM</p> <p>14 opinion, my opinion about what? 01:58:58PM</p> <p>15 Q. About what was causing the 01:59:00PM</p> <p>16 decline in Pharmacia stock on February 01:59:01PM</p> <p>17 8th, 2001. Well, let me strike that 01:59:07PM</p> <p>18 question. 01:59:11PM</p> <p>19 Are you offering an opinion as 01:59:11PM</p> <p>20 to what caused the decline in Pharmacia 01:59:13PM</p> <p>21 stock price on February 8th, 2001? 01:59:14PM</p> <p>22 A. Well, again, I haven't done a 01:59:16PM</p> <p>23 formal analysis with statistical testing 01:59:18PM</p> <p>24 to allow me to opine as to what the cause 01:59:22PM</p> <p>25 was. 01:59:25PM</p>                                                                                                                                                   |

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| Page 222                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 224                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 But Dr. Feinstein apparently 01:59:26PM</p> <p>3 believes that there was this delayed 01:59:28PM</p> <p>4 reaction to the alleged corrective 01:59:31PM</p> <p>5 disclosure on February 6th, and he uses 01:59:32PM</p> <p>6 the stock price decline on February 8th 01:59:35PM</p> <p>7 for his materiality and loss causation 01:59:38PM</p> <p>8 analysis. 01:59:41PM</p> <p>9 And I pointed out in my 01:59:43PM</p> <p>10 rebuttal report that there was other 01:59:44PM</p> <p>11 information released on this day and he 01:59:46PM</p> <p>12 did not properly account for other 01:59:49PM</p> <p>13 information released on this day, which is 01:59:51PM</p> <p>14 one of the criticisms I have of his 01:59:54PM</p> <p>15 analysis. 01:59:57PM</p> <p>16 Q. And, again, neither this 12:51 01:59:58PM</p> <p>17 Washington AP story nor the 3:06 news 02:00:01PM</p> <p>18 story that you reference in Exhibit 11, 02:00:04PM</p> <p>19 neither of those two publications could 02:00:08PM</p> <p>20 have caused the approximately \$2 stock 02:00:10PM</p> <p>21 drop between 9:30 a.m. and 10:35 a.m., is 02:00:14PM</p> <p>22 that correct, given that they occurred 02:00:19PM</p> <p>23 subsequent in time? 02:00:21PM</p> <p>24 A. And, again, as we talked about 02:00:21PM</p> <p>25 earlier, obviously the events themselves 02:00:23PM</p>                   | <p>1 LEHN - CONFIDENTIAL</p> <p>2 a bid. 02:01:18PM</p> <p>3 Q. So the price can be impacted by 02:01:18PM</p> <p>4 anticipation of the probability of an 02:01:20PM</p> <p>5 event occurring; is that correct? 02:01:22PM</p> <p>6 MR. WANG: Objection. 02:01:24PM</p> <p>7 A. Conceptually, that's correct. 02:01:24PM</p> <p>8 Q. So if the market on the morning 02:01:26PM</p> <p>9 of February 7th, after seeing -- or 02:01:28PM</p> <p>10 incorporating Dr. Goldkind's remarks 02:01:32PM</p> <p>11 lowered its assessment of the probability 02:01:37PM</p> <p>12 of the Advisory Committee voting to revise 02:01:40PM</p> <p>13 the Celebrex label, that presentation 02:01:47PM</p> <p>14 could have impacted the Pharmacia stock 02:01:51PM</p> <p>15 price on the morning of February 7th; is 02:01:54PM</p> <p>16 that correct? 02:01:57PM</p> <p>17 A. As a purely theoretical matter, 02:01:57PM</p> <p>18 anything that might have caused the market 02:02:03PM</p> <p>19 to believe that the Advisory Panel would 02:02:04PM</p> <p>20 vote against recommending a label change, 02:02:09PM</p> <p>21 theoretically could have an impact on 02:02:13PM</p> <p>22 Pharmacia stock price. 02:02:16PM</p> <p>23 But that is separate from the 02:02:18PM</p> <p>24 issue at hand which is whether investors 02:02:20PM</p> <p>25 suffered a loss when the alleged 02:02:24PM</p>                                         |
| Page 223                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 225                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 could not have. One can't rule out at 02:00:25PM</p> <p>3 least theoretically that anticipation of 02:00:29PM</p> <p>4 those events might have. 02:00:32PM</p> <p>5 Q. So if an event is anticipated, 02:00:33PM</p> <p>6 would that prevent that event from being 02:00:35PM</p> <p>7 intervening if the market takes account of 02:00:37PM</p> <p>8 it before it happens? 02:00:40PM</p> <p>9 MR. WANG: Objection. 02:00:43PM</p> <p>10 A. I'm not sure what you mean by 02:00:43PM</p> <p>11 "intervening." But by anticipating it 02:00:45PM</p> <p>12 means that you anticipate it with a 02:00:48PM</p> <p>13 certain probability and then when the 02:00:51PM</p> <p>14 event actually occurs it is the 02:00:53PM</p> <p>15 realization of that event. 02:00:55PM</p> <p>16 So you can have both 02:00:58PM</p> <p>17 anticipation, and then when the event 02:00:59PM</p> <p>18 occurs, you can have another price 02:01:01PM</p> <p>19 reaction, similar to takeovers, that often 02:01:02PM</p> <p>20 there is speculation before a takeover bid 02:01:07PM</p> <p>21 and you see a run-up in the target 02:01:09PM</p> <p>22 company's stock price, and then when the 02:01:11PM</p> <p>23 bid is announced, you get another pop in 02:01:12PM</p> <p>24 the stock price because now the 02:01:15PM</p> <p>25 probability is one that that they received 02:01:16PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 corrective disclosures occurred and all of 02:02:25PM</p> <p>3 that occurred on February 6th. 02:02:27PM</p> <p>4 Q. Did you do anything to test to 02:02:29PM</p> <p>5 rule out the possibility that the 02:02:39PM</p> <p>6 publication of the analyst report "CLASS 02:02:44PM</p> <p>7 Flunks Out" and the publication of the 02:02:49PM</p> <p>8 Bear Stearns analyst report, Exhibit 509 02:02:52PM</p> <p>9 that we just looked at after the close on 02:02:55PM</p> <p>10 February 7th, 2001, that the publication 02:02:58PM</p> <p>11 of those reports caused the \$2 stock price 02:03:00PM</p> <p>12 decline at the open between 9:30 and 10:30 02:03:07PM</p> <p>13 a.m. on February 8th? 02:03:10PM</p> <p>14 A. No. And, again, that wasn't 02:03:12PM</p> <p>15 relevant for my opinion. 02:03:14PM</p> <p>16 Q. But you do agree that analyst 02:03:16PM</p> <p>17 reports can in certain circumstances move 02:03:20PM</p> <p>18 the market price of a stock; is that 02:03:22PM</p> <p>19 correct? 02:03:24PM</p> <p>20 A. Under certain circumstances. 02:03:24PM</p> <p>21 But not because they are simply 02:03:29PM</p> <p>22 regurgitating information that has been 02:03:33PM</p> <p>23 previously released, but instead because 02:03:34PM</p> <p>24 they either reveal new information which 02:03:36PM</p> <p>25 the market previously hadn't had, or they 02:03:39PM</p> |

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| Page 226                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 228                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 might be changing their target prices, 02:03:43PM</p> <p>3 their recommendations, and that's known in 02:03:45PM</p> <p>4 the academic literature to be associated 02:03:47PM</p> <p>5 with price changes. 02:03:49PM</p> <p>6 So in the AOL report that you 02:03:50PM</p> <p>7 presented to me before, as I was going 02:03:53PM</p> <p>8 through looking at how AOL's stock price 02:03:56PM</p> <p>9 reacted to key events throughout, I used a 02:04:00PM</p> <p>10 one-day window. When it came to that one 02:04:03PM</p> <p>11 event there was speculation about an SEC 02:04:05PM</p> <p>12 investigation on day one, and then the 02:04:08PM</p> <p>13 next day there was a Sanford Bernstein 02:04:10PM</p> <p>14 report that revealed new information based 02:04:14PM</p> <p>15 on conversations with management that 02:04:16PM</p> <p>16 provided additional information to the 02:04:18PM</p> <p>17 information that had been revealed the day 02:04:19PM</p> <p>18 before. 02:04:22PM</p> <p>19 In a sense it was correcting 02:04:23PM</p> <p>20 the information that had been presented 02:04:25PM</p> <p>21 the day before, and you basically saw the 02:04:27PM</p> <p>22 price go up on one day and then go down 02:04:31PM</p> <p>23 the next day and the combined effect was 02:04:33PM</p> <p>24 not significant. 02:04:35PM</p> <p>25 That's very different than what 02:04:37PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 And Dr. Goldkind did not, with 02:05:34PM</p> <p>3 all due respect, from what I've seen, did 02:05:36PM</p> <p>4 not add anything beyond what had been 02:05:39PM</p> <p>5 revealed the day before. 02:05:42PM</p> <p>6 Q. If the market had fully 02:05:43PM</p> <p>7 absorbed the information in the briefing 02:05:44PM</p> <p>8 documents, why did so many analysts feel 02:05:47PM</p> <p>9 that they needed to publish their reports 02:05:49PM</p> <p>10 on the 7th and 8th, in your opinion? 02:05:51PM</p> <p>11 A. There was a lot happening that 02:05:54PM</p> <p>12 week. You had the Advisory Panel vote and 02:05:56PM</p> <p>13 then you had the Vioxx vote and you had 02:05:59PM</p> <p>14 the Vioxx briefing materials. 02:06:01PM</p> <p>15 And I'm not an analyst, but if 02:06:03PM</p> <p>16 there was something really important 02:06:06PM</p> <p>17 released on the morning of the 6th, 02:06:08PM</p> <p>18 knowing how competition in markets occurs 02:06:10PM</p> <p>19 especially among analysts, you can bet 02:06:13PM</p> <p>20 your bottom dollar that reports would have 02:06:16PM</p> <p>21 been out there and they are on days the 02:06:18PM</p> <p>22 company announces earnings, you see lots 02:06:21PM</p> <p>23 of analysts commenting. 02:06:25PM</p> <p>24 But in case you had the 02:06:26PM</p> <p>25 information released on February 6th, no 02:06:28PM</p> |
| Page 227                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 229                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 we have here, the alleged corrective 02:04:38PM</p> <p>3 disclosure occurred on the morning of 02:04:40PM</p> <p>4 February 6th and there was no correction 02:04:42PM</p> <p>5 to that correction. 02:04:44PM</p> <p>6 Q. You don't think Goldkind's 02:04:46PM</p> <p>7 statements that there is no safety 02:04:47PM</p> <p>8 difference between these drugs was 02:04:49PM</p> <p>9 corrective of the company's briefing 02:04:52PM</p> <p>10 document and Mr. Hassan's presentation of 02:04:54PM</p> <p>11 the JAMA article on February 6th? 02:04:57PM</p> <p>12 A. It did not correct the 02:04:59PM</p> <p>13 allegations beyond what was corrected in 02:05:04PM</p> <p>14 the briefing materials that was released 02:05:07PM</p> <p>15 publicly on February 6th. 02:05:09PM</p> <p>16 You know, as I have indicated 02:05:12PM</p> <p>17 several times, if you look at the 02:05:13PM</p> <p>18 plaintiffs' allegations in the second 02:05:15PM</p> <p>19 interrogatory response and then you look 02:05:19PM</p> <p>20 at the statistical reviewer's briefing 02:05:21PM</p> <p>21 document released on February 6th, all of 02:05:23PM</p> <p>22 those alleged misrepresentations were 02:05:27PM</p> <p>23 corrected within the first several pages 02:05:29PM</p> <p>24 of that statistical reviewer's briefing 02:05:31PM</p> <p>25 document. 02:05:33PM</p>                                 | <p>1 LEHN - CONFIDENTIAL</p> <p>2 significant stock price reaction, over 4 02:06:30PM</p> <p>3 million shares traded, so people were 02:06:33PM</p> <p>4 trading, but there was no significant 02:06:35PM</p> <p>5 revaluation of Pharmacia. And then you 02:06:37PM</p> <p>6 have these two important hearings back to 02:06:39PM</p> <p>7 back. 02:06:42PM</p> <p>8 And it seems to me that a 02:06:44PM</p> <p>9 reasonable response would be if the 02:06:45PM</p> <p>10 information that came out on the 6th is 02:06:47PM</p> <p>11 not that important, but you've got a lot 02:06:49PM</p> <p>12 of other stuff happening in the next two 02:06:52PM</p> <p>13 days, they are going to issue the reports 02:06:54PM</p> <p>14 in the next two days. 02:06:56PM</p> <p>15 Q. Would you agree that the 02:06:57PM</p> <p>16 information in the disclosure on February 02:06:58PM</p> <p>17 6th was discussed at length on February 02:07:00PM</p> <p>18 7th at the Advisory Committee meeting? 02:07:02PM</p> <p>19 A. Again, I haven't read the 02:07:05PM</p> <p>20 transcript word for word, but yes, I think 02:07:07PM</p> <p>21 it is fair to say it was discussed. 02:07:11PM</p> <p>22 Q. And would you agree that the 02:07:12PM</p> <p>23 vote of the Advisory Committee on the 02:07:14PM</p> <p>24 afternoon of the 7th was based on the 02:07:17PM</p> <p>25 entire study data? 02:07:19PM</p>                                 |

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| <p style="text-align: right;">Page 230</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. But that's irrelevant. That is 02:07:20PM</p> <p>3 a distinct event. That is actions of 02:07:22PM</p> <p>4 individuals on the information that had 02:07:26PM</p> <p>5 been disclosed. The actual corrective 02:07:28PM</p> <p>6 disclosure occurred on the 6th. How other 02:07:30PM</p> <p>7 people, third parties, react to that 02:07:34PM</p> <p>8 information in my opinion is not 02:07:36PM</p> <p>9 appropriate to look at if one is trying to 02:07:38PM</p> <p>10 determine whether there is loss causation. 02:07:40PM</p> <p>11 Q. Did you consider the 02:07:42PM</p> <p>12 internal -- internally what the people 02:07:44PM</p> <p>13 close to CLASS at Pharmacia and Pfizer 02:07:46PM</p> <p>14 thought about the likelihood of a label 02:07:49PM</p> <p>15 change after they saw the entire study 02:07:52PM</p> <p>16 data in early March or April of 2000? 02:07:53PM</p> <p>17 A. I don't recall seeing it, nor 02:07:56PM</p> <p>18 would it be relevant. It is totally 02:07:58PM</p> <p>19 irrelevant for purposes of loss causation 02:08:01PM</p> <p>20 and materiality because what you want to 02:08:03PM</p> <p>21 know for purposes of loss causation is 02:08:04PM</p> <p>22 what did the market know, when did they 02:08:07PM</p> <p>23 know it, and how did it react. And 02:08:09PM</p> <p>24 internal communications are completely 02:08:11PM</p> <p>25 irrelevant to that issue. 02:08:13PM</p> | <p style="text-align: right;">Page 232</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 about the Advisory Committee vote on the 02:09:07PM</p> <p>3 afternoon of February 7th, correct? You 02:09:11PM</p> <p>4 are offering an opinion in this case? 02:09:13PM</p> <p>5 A. That is correct. 02:09:14PM</p> <p>6 Q. And what is your opinion as to 02:09:15PM</p> <p>7 how that impacted the company's stock 02:09:16PM</p> <p>8 price? 02:09:18PM</p> <p>9 A. Well, again, I haven't done a 02:09:18PM</p> <p>10 statistical analysis, nor did I think it 02:09:22PM</p> <p>11 was necessary to form an opinion, because 02:09:24PM</p> <p>12 it is irrelevant to my opinion as to loss 02:09:26PM</p> <p>13 causation and materiality. It is a 02:09:30PM</p> <p>14 separate event. 02:09:31PM</p> <p>15 The corrective disclosure -- 02:09:32PM</p> <p>16 the alleged corrective disclosure was made 02:09:33PM</p> <p>17 on February 6th. Dr. Feinstein and I 02:09:35PM</p> <p>18 agree that the market for Pharmacia stock 02:09:40PM</p> <p>19 is efficient. The appropriate day to look 02:09:41PM</p> <p>20 at is February 6th. That's the day the 02:09:44PM</p> <p>21 alleged corrective disclosure occurred. 02:09:47PM</p> <p>22 If some third party acted on that 02:09:49PM</p> <p>23 information the next day, that is a 02:09:51PM</p> <p>24 discrete, separate event. It is distinct 02:09:54PM</p> <p>25 from the alleged corrective disclosure. 02:09:56PM</p>                                                     |
| <p style="text-align: right;">Page 231</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Are you offering an opinion 02:08:15PM</p> <p>3 that the Advisory Committee vote on 02:08:17PM</p> <p>4 February 7th is an intervening event that 02:08:19PM</p> <p>5 would sever any additional stock price 02:08:22PM</p> <p>6 reaction to the disclosures in the 02:08:26PM</p> <p>7 Advisory Briefing Committee reports posted 02:08:31PM</p> <p>8 and the discussion at the Advisory 02:08:36PM</p> <p>9 Committee in the morning and early 02:08:37PM</p> <p>10 afternoon of the 7th? 02:08:39PM</p> <p>11 MR. WANG: Objection. 02:08:41PM</p> <p>12 A. I'm sorry, I'm not sure I 02:08:41PM</p> <p>13 understand the question. 02:08:43PM</p> <p>14 Q. Are you offering an opinion 02:08:43PM</p> <p>15 that the vote of the Advisory Committee on 02:08:44PM</p> <p>16 February 7th is an intervening event that 02:08:46PM</p> <p>17 severs any causation from the facts that 02:08:49PM</p> <p>18 were revealed to the market on February 02:08:53PM</p> <p>19 6th and earlier in the day on February 02:08:55PM</p> <p>20 7th? 02:08:57PM</p> <p>21 MR. WANG: Objection, vague. 02:08:58PM</p> <p>22 A. I don't understand what you 02:08:59PM</p> <p>23 mean by an intervening event. Intervening 02:09:02PM</p> <p>24 of what? 02:09:05PM</p> <p>25 Q. Well, you offered an opinion 02:09:05PM</p>                                                                                                                          | <p style="text-align: right;">Page 233</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 It might have some association with it 02:09:59PM</p> <p>3 because maybe that decision was based on 02:10:01PM</p> <p>4 that disclosure, but it is a separate 02:10:02PM</p> <p>5 event. 02:10:05PM</p> <p>6 And to commingle that with the 02:10:06PM</p> <p>7 alleged corrective disclosure, in my 02:10:08PM</p> <p>8 opinion, it is inappropriate and it 02:10:10PM</p> <p>9 results in an unreliable opinion with 02:10:12PM</p> <p>10 respect to loss causation. 02:10:15PM</p> <p>11 Q. If the evidence is presented 02:10:16PM</p> <p>12 and the jury or the trier of fact accepts 02:10:20PM</p> <p>13 that the company was aware as of the first 02:10:22PM</p> <p>14 day of the class period that they would be 02:10:25PM</p> <p>15 unable based on the entire study data, the 02:10:28PM</p> <p>16 entire CLASS data that was concealed from 02:10:32PM</p> <p>17 the market, that they would be unable to 02:10:34PM</p> <p>18 get the label change that they were asking 02:10:36PM</p> <p>19 for, or they were going to be unable to 02:10:39PM</p> <p>20 get the removal of the GI NSAID warning, 02:10:41PM</p> <p>21 would that type of evidence in any way 02:10:44PM</p> <p>22 impact your opinion that the vote was an 02:10:46PM</p> <p>23 intervening event that could not be 02:10:51PM</p> <p>24 predicted by the company and could not be 02:10:53PM</p> <p>25 considered for loss causation purposes? 02:10:55PM</p> |

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| Page 234                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 236                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. It wouldn't affect it at all. 02:10:59PM</p> <p>3 Because what I look to is what the 02:11:00PM</p> <p>4 plaintiffs allege were the 02:11:02PM</p> <p>5 misrepresentations, and what you just 02:11:03PM</p> <p>6 described as far as I recall was not 02:11:05PM</p> <p>7 contained in either the complaint or in 02:11:06PM</p> <p>8 the second interrogatory response. 02:11:08PM</p> <p>9 And as a loss causation person 02:11:11PM</p> <p>10 I look at what the allegations are and 02:11:14PM</p> <p>11 then I look at the alleged corrective 02:11:15PM</p> <p>12 disclosures. And I don't consider new 02:11:17PM</p> <p>13 allegations that are now thrown in if they 02:11:21PM</p> <p>14 are not in the complaint or in the second 02:11:24PM</p> <p>15 interrogatory response. 02:11:26PM</p> <p>16 Q. What if the court instructed 02:11:27PM</p> <p>17 you to consider certain evidence, you 02:11:29PM</p> <p>18 still wouldn't consider it? 02:11:31PM</p> <p>19 MR. WANG: Objection. 02:11:32PM</p> <p>20 A. Well, obviously if counsel or 02:11:32PM</p> <p>21 the court were to ask me to consider that, 02:11:35PM</p> <p>22 I would consider it. 02:11:37PM</p> <p>23 Q. Well, have you testified at 02:11:38PM</p> <p>24 trial before? 02:11:40PM</p> <p>25 A. I have. 02:11:41PM</p>                                                                              | <p>1 LEHN - CONFIDENTIAL</p> <p>2 been marked previously in this case as 02:12:44PM</p> <p>3 Plaintiffs' Exhibit 414. 02:12:46PM</p> <p>4 Could you take a look at that 02:12:49PM</p> <p>5 document. And this is an e-mail chain 02:12:50PM</p> <p>6 between two Pharmacia -- I'm sorry, two 02:12:57PM</p> <p>7 Pfizer medical doctors/scientists, and 02:13:01PM</p> <p>8 Mona Wahba, who was a Pfizer medical 02:13:05PM</p> <p>9 director, writes -- on the first day of 02:13:08PM</p> <p>10 the class period, April 17th, 2000, writes 02:13:11PM</p> <p>11 "The data won't support the original 02:13:14PM</p> <p>12 intent of modify the GI warning, agree 02:13:16PM</p> <p>13 with you need to be communicated." 02:13:20PM</p> <p>14 And that's in response to an 02:13:22PM</p> <p>15 e-mail from Lori Shafner where she says 02:13:23PM</p> <p>16 "If we know that we will not achieve the 02:13:26PM</p> <p>17 original intent to modify the NSAID GI 02:13:28PM</p> <p>18 warning, should we communicate to Pfizer 02:13:29PM</p> <p>19 senior management?" 02:13:31PM</p> <p>20 And I just want to clarify that 02:13:31PM</p> <p>21 it's irrelevant to your opinion whether or 02:13:35PM</p> <p>22 not Pharmacia/Pfizer internally knew that 02:13:38PM</p> <p>23 they wouldn't get a label change on the 02:13:43PM</p> <p>24 first day of the class period. 02:13:44PM</p> <p>25 A. It is irrelevant to my opinion 02:13:46PM</p> |
| Page 235                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 237                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And was the complaint involved 02:11:41PM</p> <p>3 in any way in your testimony at trial, or 02:11:43PM</p> <p>4 did you testify about the facts as they 02:11:45PM</p> <p>5 came in before the jury in the courtroom? 02:11:48PM</p> <p>6 A. Well, I've testified at trial 02:11:50PM</p> <p>7 in a number of cases. As I sit here, I 02:11:53PM</p> <p>8 obviously can't recall with precision all 02:11:56PM</p> <p>9 the cases and all the facts in those 02:11:58PM</p> <p>10 cases. But it certainly is my practice to 02:12:02PM</p> <p>11 look to the complaint or interrogatory 02:12:07PM</p> <p>12 responses to identify what is being 02:12:10PM</p> <p>13 alleged and then to do proper loss 02:12:13PM</p> <p>14 causation analysis. 02:12:16PM</p> <p>15 I take those allegations and 02:12:18PM</p> <p>16 determine whether there is a scientific 02:12:20PM</p> <p>17 basis to conclude that investors suffered 02:12:23PM</p> <p>18 losses because of those allegations. 02:12:25PM</p> <p>19 Q. But you didn't consider 02:12:27PM</p> <p>20 evidence as to whether the company 02:12:28PM</p> <p>21 believed internally that the entire study 02:12:30PM</p> <p>22 data would not support a label change? 02:12:35PM</p> <p>23 A. That was irrelevant given the 02:12:38PM</p> <p>24 allegations. 02:12:40PM</p> <p>25 Q. I want to show you what has 02:12:40PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 with respect to materiality and loss 02:13:48PM</p> <p>3 causation, that's correct. 02:13:50PM</p> <p>4 Q. Earlier you referenced that the 02:13:51PM</p> <p>5 market could be assessing earlier in the 02:13:55PM</p> <p>6 day the probability of how the vote would 02:13:58PM</p> <p>7 occur. Do you recall that? 02:14:00PM</p> <p>8 A. Correct. 02:14:01PM</p> <p>9 Q. And we also talked about there 02:14:02PM</p> <p>10 was a \$1.50 stock price decline in the 02:14:04PM</p> <p>11 early morning hours of February 7th. Do 02:14:09PM</p> <p>12 you remember that? 02:14:11PM</p> <p>13 A. Correct. 02:14:11PM</p> <p>14 Q. And you are not testifying 02:14:12PM</p> <p>15 that -- strike that. 02:14:20PM</p> <p>16 You haven't done any sort of 02:14:20PM</p> <p>17 scientific work to rule out that the stock 02:14:22PM</p> <p>18 price decline early on February 7th, that 02:14:25PM</p> <p>19 that stock price decline was in 02:14:29PM</p> <p>20 anticipation of a negative vote. Have you 02:14:33PM</p> <p>21 formed any opinion as to whether that 02:14:37PM</p> <p>22 stock price decline is related to the 02:14:39PM</p> <p>23 market's anticipation of the company 02:14:41PM</p> <p>24 getting a negative vote? 02:14:43PM</p> <p>25 MR. WANG: Objection. 02:14:46PM</p>                                                                                                               |

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| Page 238                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 240                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. As I indicated, I haven't done 02:14:47PM</p> <p>3 any statistical analysis that would allow 02:14:49PM</p> <p>4 me to opine as to the cause of the 02:14:52PM</p> <p>5 movements in Pharmacia stock price on 02:14:59PM</p> <p>6 February 7th, which, again, I indicate was 02:15:00PM</p> <p>7 not statistically significant according to 02:15:05PM</p> <p>8 my event study. 02:15:07PM</p> <p>9 But even if one were to assume 02:15:08PM</p> <p>10 that the decline in Pharmacia stock price 02:15:11PM</p> <p>11 on the morning of February 7th was in 02:15:13PM</p> <p>12 anticipation of an adverse vote by the 02:15:16PM</p> <p>13 Advisory Panel and if one were to 02:15:19PM</p> <p>14 hypothetically assume that that was 02:15:21PM</p> <p>15 statistically significant, it would have 02:15:22PM</p> <p>16 no bearing on my opinion because that 02:15:24PM</p> <p>17 would be a price response to an event that 02:15:26PM</p> <p>18 is distinct from the alleged corrective 02:15:29PM</p> <p>19 disclosures, all of which occurred on the 02:15:32PM</p> <p>20 morning of February 6th. 02:15:34PM</p> <p>21 Q. And it is your opinion that 02:15:36PM</p> <p>22 under no circumstances can a -- well, 02:15:38PM</p> <p>23 strike that question. 02:15:43PM</p> <p>24 I want to show you what I'm 02:15:44PM</p> <p>25 marking as Plaintiffs' Exhibit 511. 02:15:52PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 over time? 02:17:38PM</p> <p>3 A. Again, not exactly. I 02:17:40PM</p> <p>4 estimated the cumulative abnormal returns 02:17:42PM</p> <p>5 around takeover announcements for 02:17:46PM</p> <p>6 companies in the sample. In the course of 02:17:50PM</p> <p>7 doing an event study you use regression 02:17:53PM</p> <p>8 analysis. So I did use regression 02:17:55PM</p> <p>9 analysis, but that was used to estimate 02:17:57PM</p> <p>10 the cumulative abnormal returns. 02:17:59PM</p> <p>11 Q. And as part of the regression 02:18:01PM</p> <p>12 analysis you selected an event window, 02:18:03PM</p> <p>13 correct? 02:18:06PM</p> <p>14 A. For the takeovers, correct. 02:18:06PM</p> <p>15 Q. And in this case you used a 02:18:09PM</p> <p>16 multiple-day event window; is that 02:18:11PM</p> <p>17 correct? 02:18:12PM</p> <p>18 A. I believe so. And, again, as I 02:18:12PM</p> <p>19 indicated earlier, that is the norm when 02:18:14PM</p> <p>20 you have a large sample. I think I had -- 02:18:16PM</p> <p>21 we had about 714 acquisitions here. 02:18:19PM</p> <p>22 Q. And you utilized a five-day 02:18:23PM</p> <p>23 event window in assessing the cumulative 02:18:26PM</p> <p>24 abnormal return following the events at 02:18:28PM</p> <p>25 issue? 02:18:30PM</p>    |
| Page 239                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 241                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 (Plaintiffs' Exhibit 511 marked 02:15:54PM</p> <p>3 for identification.) 02:15:56PM</p> <p>4 Q. Could you take a look at that 02:16:38PM</p> <p>5 document and tell me if you recognize it. 02:16:39PM</p> <p>6 A. It looks familiar. 02:16:41PM</p> <p>7 Q. And this is an article you 02:16:42PM</p> <p>8 authored entitled "CEO Turnover After 02:16:43PM</p> <p>9 Acquisitions: Are Bad Bidders Fired?" 02:16:46PM</p> <p>10 A. That's correct. 02:16:52PM</p> <p>11 Q. And this is an analysis you did 02:16:52PM</p> <p>12 looking at market reaction to CEO turnover 02:16:54PM</p> <p>13 information? 02:16:59PM</p> <p>14 A. Not so much that, but it was 02:17:02PM</p> <p>15 looking at stock price reactions to 02:17:04PM</p> <p>16 announcements of takeovers and then seeing 02:17:06PM</p> <p>17 whether or not those stock price reactions 02:17:10PM</p> <p>18 were associated with subsequent firings of 02:17:13PM</p> <p>19 chief executive officers. So do CEOs who 02:17:16PM</p> <p>20 make, quote, bad acquisitions 02:17:20PM</p> <p>21 systematically get fired subsequently. 02:17:24PM</p> <p>22 Q. And one of the things you did 02:17:27PM</p> <p>23 as part of this paper is you did an 02:17:28PM</p> <p>24 analysis, a regression type analysis 02:17:30PM</p> <p>25 looking at cumulative abnormal returns 02:17:34PM</p>                                      | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I would have to refresh my 02:18:30PM</p> <p>3 memory. If you can direct me to the page. 02:18:32PM</p> <p>4 Q. Sure. There is the Empirical 02:18:34PM</p> <p>5 Design, Section C, starting at page 1768 02:18:35PM</p> <p>6 on to 1769. 02:18:39PM</p> <p>7 A. Right. Okay. 02:18:46PM</p> <p>8 Q. And I guess you said "right." 02:18:55PM</p> <p>9 Is that in response to my question or do 02:18:57PM</p> <p>10 you want me to read the question back? 02:18:59PM</p> <p>11 A. You can read it back. 02:19:00PM</p> <p>12 (The record was read.) 02:19:19PM</p> <p>13 A. Well, there are multiple 02:19:20PM</p> <p>14 windows. The one-day window, day zero, a 02:19:22PM</p> <p>15 three-day window, minus one/plus one, a 02:19:28PM</p> <p>16 seven-day window, minus one/plus five, an 02:19:33PM</p> <p>17 11-day window, minus five/plus five, and 02:19:37PM</p> <p>18 then a 26-day window, minus five/plus 20. 02:19:41PM</p> <p>19 Q. So you looked at several 02:19:46PM</p> <p>20 different windows in writing this article, 02:19:48PM</p> <p>21 correct? 02:19:49PM</p> <p>22 A. That is correct. 02:19:50PM</p> <p>23 Q. And all of them except for one 02:19:50PM</p> <p>24 involved multiple days; is that correct? 02:19:53PM</p> <p>25 A. That is correct. 02:19:55PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. So at least for the purposes of 02:19:56PM</p> <p>3 your design, your empirical design for the 02:19:58PM</p> <p>4 research involved in this paper, you did 02:20:01PM</p> <p>5 utilize multi-day windows; is that 02:20:03PM</p> <p>6 correct? 02:20:06PM</p> <p>7 A. Right. And as I indicated 02:20:06PM</p> <p>8 earlier there is nothing wrong with using 02:20:08PM</p> <p>9 multi-day windows if the facts and 02:20:10PM</p> <p>10 circumstances dictate it. So it is not a 02:20:14PM</p> <p>11 dogma that you should never use a 02:20:16PM</p> <p>12 multi-day window. But there is a reason 02:20:19PM</p> <p>13 why in a large sample study in an academic 02:20:21PM</p> <p>14 journal that I and others use long 02:20:25PM</p> <p>15 windows, notwithstanding the efficient 02:20:28PM</p> <p>16 market hypothesis that says new 02:20:30PM</p> <p>17 information should be rapidly absorbed in 02:20:32PM</p> <p>18 companies' stock prices. 02:20:37PM</p> <p>19 The first reason is when you 02:20:38PM</p> <p>20 are doing a large sample study before, as 02:20:39PM</p> <p>21 I indicated before with Patell and 02:20:41PM</p> <p>22 Wolfson, the researcher, and certainly 02:20:45PM</p> <p>23 this researcher, didn't make a 02:20:46PM</p> <p>24 determination as to the efficiency of the 02:20:47PM</p> <p>25 market for each one of those 714 stocks. 02:20:49PM</p>                              | <p>1 LEHN - CONFIDENTIAL</p> <p>2 know whether it occurred before the market 02:21:55PM</p> <p>3 opened, during the trading day, or after 02:21:57PM</p> <p>4 the market closed, in which case your day 02:21:59PM</p> <p>5 zero might not be the appropriate day, it 02:22:02PM</p> <p>6 might be day plus one, the first day that 02:22:04PM</p> <p>7 the market had to absorb the information. 02:22:06PM</p> <p>8 So that's a second reason. 02:22:08PM</p> <p>9 A third reason is the research 02:22:09PM</p> <p>10 question, and the research question 02:22:12PM</p> <p>11 sometimes dictates a long window. Here we 02:22:16PM</p> <p>12 were looking at the market's overall 02:22:19PM</p> <p>13 assessment of takeover decisions company 02:22:23PM</p> <p>14 by company. So we would estimate the 02:22:27PM</p> <p>15 abnormal returns for each company and then 02:22:30PM</p> <p>16 see the extent to which that was 02:22:33PM</p> <p>17 associated with the firing of CEOs. It 02:22:35PM</p> <p>18 wasn't to simply test how quickly the 02:22:38PM</p> <p>19 market absorbed information that came out 02:22:40PM</p> <p>20 on the takeover announcement date. 02:22:43PM</p> <p>21 So, for example, in takeovers 02:22:45PM</p> <p>22 you often have a release that a company is 02:22:49PM</p> <p>23 making a bid for another company on day 02:22:52PM</p> <p>24 zero. And then additional information 02:22:54PM</p> <p>25 comes out in the ensuing days or weeks 02:22:56PM</p> |
| Page 243                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 245                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 And therefore it is normal in the academic 02:20:53PM</p> <p>3 literature for large samples to report the 02:20:56PM</p> <p>4 one-day event, and then insofar that the 02:20:58PM</p> <p>5 market for some of the securities is 02:21:04PM</p> <p>6 inefficient, to replicate the result over 02:21:05PM</p> <p>7 longer windows. 02:21:08PM</p> <p>8 But if a researcher determined 02:21:09PM</p> <p>9 that the market for every security here 02:21:12PM</p> <p>10 was efficient and the only purpose of the 02:21:14PM</p> <p>11 study was to see how quickly the market 02:21:17PM</p> <p>12 absorbed that information, a one-day 02:21:19PM</p> <p>13 window would be fine. But that's not the 02:21:22PM</p> <p>14 case here. 02:21:24PM</p> <p>15 Second is when you've got a 02:21:24PM</p> <p>16 large sample, in this case 714 companies, 02:21:26PM</p> <p>17 unlike in litigation where a lot of 02:21:29PM</p> <p>18 resources are spent trying to find the 02:21:32PM</p> <p>19 time of certain information releases, 02:21:34PM</p> <p>20 academics for the most part with large 02:21:37PM</p> <p>21 samples don't try to track down the time 02:21:40PM</p> <p>22 at which information was released. And so 02:21:42PM</p> <p>23 that means that you might have a date, a 02:21:47PM</p> <p>24 calendar date on which a takeover was 02:21:49PM</p> <p>25 announced, but as an academic you don't 02:21:52PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 where the company may revise the bid, 02:23:00PM</p> <p>3 maybe another bidder comes in and they 02:23:02PM</p> <p>4 have to pay more. Maybe they change the 02:23:04PM</p> <p>5 terms of the merger agreement. 02:23:08PM</p> <p>6 And for purposes of this 02:23:10PM</p> <p>7 research where we were looking at takeover 02:23:11PM</p> <p>8 decisions and how does that correspond to 02:23:14PM</p> <p>9 CEO turnover, we wanted more than just the 02:23:16PM</p> <p>10 one-day return. We wanted to also see 02:23:20PM</p> <p>11 what happened over longer windows where 02:23:23PM</p> <p>12 additional information, new information 02:23:25PM</p> <p>13 came out. 02:23:28PM</p> <p>14 So it's not that it took the 02:23:28PM</p> <p>15 market a long period to process it, but 02:23:30PM</p> <p>16 maybe there is additional information that 02:23:32PM</p> <p>17 would be relevant in judging whether this 02:23:35PM</p> <p>18 acquisition was a good or bad acquisition. 02:23:39PM</p> <p>19 Q. The explanation you just gave 02:23:41PM</p> <p>20 about the large samples and so forth in 02:23:44PM</p> <p>21 your research, those would not be 02:23:46PM</p> <p>22 applicable to the AOL situation, though, 02:23:48PM</p> <p>23 correct, where you opined in litigation? 02:23:50PM</p> <p>24 A. Right. But, again, as I 02:23:52PM</p> <p>25 indicated before, that is very different 02:23:54PM</p>                                         |

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| Page 246                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 248                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 than this case as well. 02:23:56PM</p> <p>3 In that case, and I refreshed 02:23:57PM</p> <p>4 my memory over lunch and reviewed it, I 02:23:59PM</p> <p>5 was asked to opine as to what contributed 02:24:02PM</p> <p>6 to the decline in AOL stock price over a 02:24:04PM</p> <p>7 certain period. And I looked at the 02:24:08PM</p> <p>8 contribution of the overall market, the 02:24:11PM</p> <p>9 contribution of an industry index, and 02:24:12PM</p> <p>10 then firm-specific information where I 02:24:14PM</p> <p>11 identified days in which there was a 02:24:19PM</p> <p>12 statistically significant decline. 02:24:20PM</p> <p>13 And for most of the dates, I 02:24:23PM</p> <p>14 think almost all of them, I looked only on 02:24:25PM</p> <p>15 the day where the negative residual return 02:24:28PM</p> <p>16 occurred. And then I got to that one day, 02:24:30PM</p> <p>17 July 25th, or whatever it was, and there 02:24:33PM</p> <p>18 was a negative residual return on that day 02:24:37PM</p> <p>19 and it was based on speculation about an 02:24:40PM</p> <p>20 SEC investigation and then the next day 02:24:43PM</p> <p>21 that negative residual return was almost 02:24:46PM</p> <p>22 completely offset and there was a Sanford 02:24:49PM</p> <p>23 Bernstein report that revealed new 02:24:52PM</p> <p>24 information to the market based on 02:24:54PM</p> <p>25 conversations with management. 02:24:56PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 statistically significant decline that 02:25:49PM</p> <p>3 day? 02:25:51PM</p> <p>4 A. There was. But, again, what 02:25:53PM</p> <p>5 I'm saying is that one doesn't have a 02:25:55PM</p> <p>6 dogma that you should never use a 02:25:57PM</p> <p>7 multiple-day window. You have to have a 02:25:58PM</p> <p>8 reason for it and a sound reason. An 02:26:01PM</p> <p>9 unsound reason is to believe that you 02:26:04PM</p> <p>10 think the market is efficient, but you 02:26:06PM</p> <p>11 think in this case it took two or three 02:26:11PM</p> <p>12 days for the market to figure it out. 02:26:11PM</p> <p>13 That's not a good reason. 02:26:11PM</p> <p>14 But there are other good 02:26:14PM</p> <p>15 reasons, including the ones that I have 02:26:15PM</p> <p>16 given in terms of large sample research 02:26:16PM</p> <p>17 and in what I have given with respect to 02:26:18PM</p> <p>18 AOL. 02:26:19PM</p> <p>19 Q. You also used a multi-day 02:26:20PM</p> <p>20 window in Apollo, I think you referenced 02:26:22PM</p> <p>21 earlier? 02:26:24PM</p> <p>22 A. Again, I haven't looked at that 02:26:25PM</p> <p>23 in a while, but my recollection is that 02:26:26PM</p> <p>24 the allegation there was that there were 02:26:27PM</p> <p>25 two separate corrective disclosures and I 02:26:29PM</p>                                    |
| Page 247                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 249                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Now, it was related to the 02:24:58PM</p> <p>3 prior day and it was offsetting the prior 02:25:00PM</p> <p>4 day effectively, so that the two-day 02:25:03PM</p> <p>5 return was not significant, which means 02:25:06PM</p> <p>6 that taken together that was effectively a 02:25:07PM</p> <p>7 correction of what had occurred the day 02:25:10PM</p> <p>8 before, and taken together there was no 02:25:13PM</p> <p>9 significant return. 02:25:15PM</p> <p>10 So the purpose there was very 02:25:15PM</p> <p>11 different than the purpose here. Here we 02:25:17PM</p> <p>12 have an alleged corrective disclosure on 02:25:19PM</p> <p>13 the morning of February 6th, and 02:25:21PM</p> <p>14 Dr. Feinstein and I both agree that there 02:25:23PM</p> <p>15 was no additional corrective disclosure 02:25:25PM</p> <p>16 made after the FDA briefing materials were 02:25:28PM</p> <p>17 posted to the website on February 6th. 02:25:31PM</p> <p>18 That's a very different 02:25:34PM</p> <p>19 situation than the AOL. In the AOL case 02:25:35PM</p> <p>20 it wasn't that I used two days because it 02:25:38PM</p> <p>21 took the market a second day to process 02:25:40PM</p> <p>22 what had come out the day before, it was 02:25:42PM</p> <p>23 there was more information coming out. 02:25:44PM</p> <p>24 Q. But in AOL if you would have 02:25:45PM</p> <p>25 stuck with the one-day window, there was a 02:25:47PM</p>           | <p>1 LEHN - CONFIDENTIAL</p> <p>2 think they followed on consecutive days, 02:26:33PM</p> <p>3 as I recall. And if that's the case, then 02:26:35PM</p> <p>4 you use a two-day window because the 02:26:37PM</p> <p>5 allegation is there is two corrective 02:26:40PM</p> <p>6 disclosures. 02:26:41PM</p> <p>7 Q. Do you have an estimate of how 02:26:42PM</p> <p>8 many times you have used multiple-day 02:26:44PM</p> <p>9 windows in litigation to asses loss 02:26:46PM</p> <p>10 causation and materiality? 02:26:46PM</p> <p>11 A. I don't. And when it is 02:26:46PM</p> <p>12 appropriate to do so and there is a 02:26:46PM</p> <p>13 scientific basis for doing so, I'm not 02:26:54PM</p> <p>14 reluctant to do so. There is not a 02:26:55PM</p> <p>15 scientific basis for doing so in this 02:26:56PM</p> <p>16 case. 02:26:58PM</p> <p>17 Q. So we know of two times that 02:26:59PM</p> <p>18 you have done it. As we sit here today, 02:27:00PM</p> <p>19 you can't rule out that there were other 02:27:02PM</p> <p>20 times that you used multi-day windows? 02:27:04PM</p> <p>21 A. Again, sir, I can't. But, 02:27:09PM</p> <p>22 again, the reason is not that I think if 02:27:11PM</p> <p>23 one opines that the market is efficient 02:27:11PM</p> <p>24 that is appropriate to use multi-day 02:27:16PM</p> <p>25 windows because you feel the market takes 02:27:18PM</p> |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 a long time to process the information. 02:27:20PM</p> <p>3 That would be a contradiction. 02:27:21PM</p> <p>4 So there may be cases where 02:27:23PM</p> <p>5 there was no opinion with respect to 02:27:24PM</p> <p>6 market efficiency, in which case it may be 02:27:26PM</p> <p>7 perfectly appropriate to use multiple-day 02:27:28PM</p> <p>8 windows. It may be that you have two 02:27:30PM</p> <p>9 corrective disclosures back to back in 02:27:35PM</p> <p>10 which case it is appropriate to use a 02:27:38PM</p> <p>11 multi-day window. Or it may be that you 02:27:40PM</p> <p>12 have information come out on day one and 02:27:44PM</p> <p>13 then there's new information that comes 02:27:46PM</p> <p>14 out that corrects the prior day 02:27:49PM</p> <p>15 information. And that would be 02:27:52PM</p> <p>16 appropriate as well. But none of that is 02:27:54PM</p> <p>17 going on in this case. 02:27:55PM</p> <p>18 Q. How many times have you served 02:27:56PM</p> <p>19 as an expert in a securities action 02:27:58PM</p> <p>20 involving a civil action involving 02:28:01PM</p> <p>21 investors and a company accused of 02:28:05PM</p> <p>22 violations of 10b, or Section 11 of the 02:28:08PM</p> <p>23 Securities Act? 02:28:11PM</p> <p>24 A. Probably -- I've been doing it 02:28:14PM</p> <p>25 for roughly 20 years, so probably 40 to 50 02:28:18PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 doesn't. 02:29:22PM</p> <p>3 And I wouldn't even view it as 02:29:22PM</p> <p>4 a multi-day window in that case. It was a 02:29:24PM</p> <p>5 two-day window, but you had two different 02:29:26PM</p> <p>6 pieces of information coming out on day 02:29:28PM</p> <p>7 one and day two, both of which were 02:29:30PM</p> <p>8 relevant in that case. 02:29:32PM</p> <p>9 Q. Now, you didn't do a regression 02:29:40PM</p> <p>10 analysis in this case looking at Merck's 02:29:42PM</p> <p>11 stock, correct? 02:29:44PM</p> <p>12 A. I did not. When you say 02:29:46PM</p> <p>13 "regression analysis," meaning event 02:29:49PM</p> <p>14 study? 02:29:51PM</p> <p>15 Q. Yeah, you didn't do the event 02:29:51PM</p> <p>16 study regression analysis for Merck stock 02:29:53PM</p> <p>17 in February of 2001 or any other dates, 02:29:56PM</p> <p>18 correct? 02:29:57PM</p> <p>19 A. That is correct. 02:29:58PM</p> <p>20 Q. And why not? 02:29:58PM</p> <p>21 A. Well, again, I didn't view it 02:29:59PM</p> <p>22 as necessary for -- certainly for my first 02:30:01PM</p> <p>23 report because it wouldn't matter for loss 02:30:05PM</p> <p>24 causation and materiality. 02:30:07PM</p> <p>25 With respect to Dr. Feinstein, 02:30:12PM</p>                                                                                                                                                                                                       |
| Page 251                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 253                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 times. 02:28:22PM</p> <p>3 Q. And roughly do you know what 02:28:22PM</p> <p>4 percentage of your retentions have been 02:28:24PM</p> <p>5 for the defendants? 02:28:26PM</p> <p>6 A. The majority, clear majority 02:28:31PM</p> <p>7 have been. But I also have been retained 02:28:36PM</p> <p>8 by the government, the SEC and DOJ on 02:28:39PM</p> <p>9 probably more than a dozen times. 02:28:44PM</p> <p>10 Q. And with respect to the times 02:28:46PM</p> <p>11 you've used multiple-day windows, you 02:28:48PM</p> <p>12 would agree with me that both in the 02:28:51PM</p> <p>13 AOL -- well, strike that. 02:28:54PM</p> <p>14 Let's start with the AOL 02:28:55PM</p> <p>15 instance. You would agree that it was 02:28:56PM</p> <p>16 beneficial to the company's position in 02:28:58PM</p> <p>17 that case, the articulation of the 02:29:00PM</p> <p>18 multi-day window in that instance? 02:29:04PM</p> <p>19 A. You know, I would have to go 02:29:05PM</p> <p>20 back and look again at the full context of 02:29:08PM</p> <p>21 the report. I don't make my decisions 02:29:10PM</p> <p>22 based on whether it is beneficial for the 02:29:12PM</p> <p>23 defendant. I make it based on whether it 02:29:15PM</p> <p>24 makes sense from a scientific perspective. 02:29:16PM</p> <p>25 And in that case it did. In this case it 02:29:19PM</p>                          | <p>1 LEHN - CONFIDENTIAL</p> <p>2 he is the one who is alleging that the 02:30:14PM</p> <p>3 information that was disclosed on February 02:30:17PM</p> <p>4 6th was affecting Pharmacia stock price on 02:30:20PM</p> <p>5 February 8th, and I simply pointed out 02:30:24PM</p> <p>6 that there was other information released 02:30:28PM</p> <p>7 on February 8th, including information 02:30:30PM</p> <p>8 about Vioxx, that he chose to ignore, and 02:30:32PM</p> <p>9 pointed to that as information that 02:30:38PM</p> <p>10 potentially could have been the cause of 02:30:40PM</p> <p>11 Pharmacia's stock price decline on 02:30:43PM</p> <p>12 February 8th. 02:30:45PM</p> <p>13 Q. You would agree that good news 02:30:46PM</p> <p>14 for Vioxx relative to Celebrex would be 02:30:47PM</p> <p>15 expected to move Pharmacia and Merck's 02:30:49PM</p> <p>16 stock price in opposite directions? 02:30:52PM</p> <p>17 A. I can't make that determination 02:30:55PM</p> <p>18 for the following reason: If you mean by 02:30:58PM</p> <p>19 a statistically significant amount, the 02:31:02PM</p> <p>20 answer is no, and for the following 02:31:04PM</p> <p>21 reason: Merck, I think its market cap was 02:31:09PM</p> <p>22 about two and a half to three times that 02:31:12PM</p> <p>23 of Pharmacia in 2001, which means that, 02:31:16PM</p> <p>24 you know, a given dollar change in value 02:31:22PM</p> <p>25 would have a bigger impact percentage-wise 02:31:25PM</p> |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 for Pharmacia than it would for Merck. 02:31:28PM</p> <p>3 And it is a fallacy, actually, 02:31:31PM</p> <p>4 in Dr. Feinstein's reasoning when he says 02:31:34PM</p> <p>5 well, the fact that Merck's stock price 02:31:36PM</p> <p>6 did not increase significantly on February 02:31:37PM</p> <p>7 8th means that it couldn't have been the 02:31:39PM</p> <p>8 reason for Pharmacia's decline. And 02:31:41PM</p> <p>9 that's just not true. 02:31:43PM</p> <p>10 If you have Merck being much 02:31:44PM</p> <p>11 bigger than Pharmacia, you may not find a 02:31:46PM</p> <p>12 statistically significant increase in 02:31:48PM</p> <p>13 Merck, but you will find a decline in 02:31:50PM</p> <p>14 Pharmacia, at least theoretically, simply 02:31:54PM</p> <p>15 because it is smaller. And the same 02:31:56PM</p> <p>16 dollar amount will represent a larger 02:31:58PM</p> <p>17 proportion of value for the smaller 02:32:00PM</p> <p>18 company than it will for the larger 02:32:02PM</p> <p>19 company. 02:32:03PM</p> <p>20 Q. Did you eyeball Merck's stock 02:32:03PM</p> <p>21 price movement in this time frame prior to 02:32:05PM</p> <p>22 writing your rebuttal report? 02:32:09PM</p> <p>23 MR. WANG: Objection. 02:32:14PM</p> <p>24 A. I don't believe I did, no. 02:32:14PM</p> <p>25 Q. You didn't think it was 02:32:15PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 zero." 02:33:09PM</p> <p>3 Do you see that? 02:33:11PM</p> <p>4 A. I'm sorry? 02:33:13PM</p> <p>5 Q. It is the second to last 02:33:15PM</p> <p>6 sentence of paragraph 46 on page 13. 02:33:18PM</p> <p>7 A. Oh, 46, I'm sorry. That's 02:33:21PM</p> <p>8 correct. 02:33:25PM</p> <p>9 Q. So given those two statements 02:33:25PM</p> <p>10 in your report, don't you think you should 02:33:28PM</p> <p>11 have looked to see at a minimum whether 02:33:30PM</p> <p>12 Merck's stock price moved on Vioxx-related 02:33:32PM</p> <p>13 information before you concluded that that 02:33:37PM</p> <p>14 could have been a possible mover of 02:33:39PM</p> <p>15 Pharmacia stock price? 02:33:41PM</p> <p>16 A. No. And, again, I was simply 02:33:43PM</p> <p>17 pointing out information that 02:33:46PM</p> <p>18 Dr. Feinstein chose to ignore, and he is 02:33:47PM</p> <p>19 the one who is claiming that February 8th 02:33:50PM</p> <p>20 is relevant for a loss causation opinion 02:33:52PM</p> <p>21 in this case. And he just simply chose to 02:33:54PM</p> <p>22 ignore the Vioxx information in his 02:33:58PM</p> <p>23 analysis. He claims he considered it, but 02:34:01PM</p> <p>24 he didn't do any analysis, he just 02:34:03PM</p> <p>25 asserted that he didn't think it was 02:34:06PM</p>                                                             |
| Page 255                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 257                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 important to your opinions? 02:32:17PM</p> <p>3 A. No. 02:32:18PM</p> <p>4 Q. And I would like you to turn 02:32:18PM</p> <p>5 your attention to paragraph 45 on page 12 02:32:20PM</p> <p>6 of your report, footnote 15. 02:32:23PM</p> <p>7 And on the last line of page 02:32:32PM</p> <p>8 12, at the bottom of footnote 15, you 02:32:34PM</p> <p>9 write "Good news for Vioxx relative to 02:32:37PM</p> <p>10 Celebrex would be expected to move 02:32:41PM</p> <p>11 Pharmacia and Merck's prices in the 02:32:43PM</p> <p>12 opposite direction." 02:32:46PM</p> <p>13 You wrote that as part of your 02:32:47PM</p> <p>14 report? 02:32:49PM</p> <p>15 A. That's correct. 02:32:49PM</p> <p>16 Q. And do you believe that to be 02:32:49PM</p> <p>17 true and accurate? 02:32:50PM</p> <p>18 A. I do. 02:32:51PM</p> <p>19 Q. And then looking at paragraph 02:32:52PM</p> <p>20 46, on page 13, the second to last 02:32:54PM</p> <p>21 sentence of paragraph 46, you write "If 02:32:59PM</p> <p>22 the information released on a particular 02:33:01PM</p> <p>23 day is both new and material to investors, 02:33:03PM</p> <p>24 then the residual return to the event date 02:33:05PM</p> <p>25 should be significantly different from 02:33:08PM</p>                                                                                              | <p>1 LEHN - CONFIDENTIAL</p> <p>2 important. 02:34:07PM</p> <p>3 So for purposes of my initial 02:34:08PM</p> <p>4 report and my rebuttal report, I didn't 02:34:09PM</p> <p>5 think it was necessary and still don't 02:34:12PM</p> <p>6 think it was necessary to do an event 02:34:13PM</p> <p>7 study on Merck. 02:34:15PM</p> <p>8 Q. Would you agree that it would 02:34:16PM</p> <p>9 support the hypothesis if you had the 02:34:18PM</p> <p>10 hypothesis -- do you have the hypothesis 02:34:21PM</p> <p>11 that you think it was Vioxx's vote on 02:34:24PM</p> <p>12 February 8th that was moving Pharmacia's 02:34:26PM</p> <p>13 stock, is that your hypothesis? 02:34:29PM</p> <p>14 MR. WANG: Objection. 02:34:32PM</p> <p>15 A. Again, I've simply described 02:34:33PM</p> <p>16 the events on February 8th and I've 02:34:35PM</p> <p>17 described the stock price movements, the 02:34:39PM</p> <p>18 raw stock price movements of Pharmacia on 02:34:41PM</p> <p>19 February 8th, and I pointed out 02:34:44PM</p> <p>20 information that Dr. Feinstein chose to 02:34:47PM</p> <p>21 ignore that very well could be the cause 02:34:52PM</p> <p>22 of Pharmacia's stock price movement on 02:34:55PM</p> <p>23 February 8th and the fact that he's the 02:34:56PM</p> <p>24 one who believes that February 8th is 02:35:00PM</p> <p>25 relevant and he chose to ignore that was 02:35:02PM</p> |

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| Page 258                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 260                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 worth mentioning in my rebuttal report. 02:35:05PM</p> <p>3 Q. But you are not offering the 02:35:07PM</p> <p>4 opinion that it was the Vioxx vote that 02:35:09PM</p> <p>5 caused the stock decline on February 8th, 02:35:11PM</p> <p>6 that's not an opinion you are going to be 02:35:14PM</p> <p>7 offering before the jury? 02:35:16PM</p> <p>8 MR. WANG: Objection. 02:35:16PM</p> <p>9 A. Again, as I sit here today, I 02:35:17PM</p> <p>10 haven't done the analysis nor have I been 02:35:19PM</p> <p>11 asked to do the analysis to form that 02:35:21PM</p> <p>12 opinion. But if between now and the time 02:35:23PM</p> <p>13 of trial I'm asked, then certainly that's 02:35:26PM</p> <p>14 something I would consider. 02:35:28PM</p> <p>15 Q. But as we are sitting here 02:35:30PM</p> <p>16 today that's not an opinion you are 02:35:31PM</p> <p>17 offering as of today's date? 02:35:33PM</p> <p>18 MR. WANG: Objection. 02:35:34PM</p> <p>19 A. Can you repeat that again? 02:35:35PM</p> <p>20 Q. The opinion that the Vioxx vote 02:35:36PM</p> <p>21 on February 8th is what caused Merck's 02:35:40PM</p> <p>22 stock price decline -- sorry, I misstated 02:35:43PM</p> <p>23 that. Strike that question. 02:35:48PM</p> <p>24 You are not offering the 02:35:49PM</p> <p>25 opinion as we sit here today that the 02:35:51PM</p>                                 | <p>1 LEHN - CONFIDENTIAL</p> <p>2 significant upward manner that day? 02:36:54PM</p> <p>3 A. No, I think that part of it is 02:36:57PM</p> <p>4 just fundamentally wrong by Dr. Feinstein. 02:36:59PM</p> <p>5 You know, a very simple 02:37:02PM</p> <p>6 example, hypothetical to illustrate the 02:37:06PM</p> <p>7 point if it is not clear: Suppose you 02:37:07PM</p> <p>8 have one company that is worth \$100 and 02:37:09PM</p> <p>9 another company that is worth \$1,000 and 02:37:12PM</p> <p>10 you are looking at a transfer of value of 02:37:16PM</p> <p>11 \$20. Well, \$20 for the smaller company, 02:37:18PM</p> <p>12 worth \$100, that's a 20 percent change, 02:37:24PM</p> <p>13 whereas the \$20 for the company that is 02:37:28PM</p> <p>14 worth \$1,000, it is a 2 percent change. 02:37:31PM</p> <p>15 And in my hypothetical a 20 02:37:34PM</p> <p>16 percent change in the value of one company 02:37:37PM</p> <p>17 might be statistically significant, but 02:37:38PM</p> <p>18 the 2 percent change in the value of the 02:37:41PM</p> <p>19 other company might not. 02:37:43PM</p> <p>20 So you can't draw the 02:37:48PM</p> <p>21 conclusion that Dr. Feinstein is drawing 02:37:50PM</p> <p>22 from what he claims is the absence of a 02:37:53PM</p> <p>23 statistically significant change in 02:37:57PM</p> <p>24 Merck's stock price on February 8th. 02:37:59PM</p> <p>25 Q. My question, though, was 02:38:06PM</p> |
| Page 259                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 261                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Vioxx Advisory Committee vote is what 02:35:53PM</p> <p>3 caused Pharmacia's stock decline on 02:35:56PM</p> <p>4 February 8th; is that correct? 02:35:58PM</p> <p>5 MR. WANG: Objection. 02:36:01PM</p> <p>6 A. Again, I haven't done the 02:36:02PM</p> <p>7 analysis that would be necessary to form 02:36:06PM</p> <p>8 an opinion as to the cause, but in my 02:36:10PM</p> <p>9 opinion as I sit here today I think it 02:36:14PM</p> <p>10 very likely could be a cause. And in 02:36:17PM</p> <p>11 order to form an opinion definitively I 02:36:21PM</p> <p>12 would have to do more analysis. 02:36:23PM</p> <p>13 Q. But that is not an opinion that 02:36:25PM</p> <p>14 you are offering as part of this 02:36:27PM</p> <p>15 litigation as we sit here today? 02:36:28PM</p> <p>16 MR. WANG: Objection. 02:36:30PM</p> <p>17 A. The opinion that I just 02:36:31PM</p> <p>18 described is the opinion that I have as of 02:36:32PM</p> <p>19 today. But to form an opinion based on 02:36:34PM</p> <p>20 the statistical analysis that would be 02:36:39PM</p> <p>21 necessary, I haven't done that analysis. 02:36:42PM</p> <p>22 Q. And it certainly would support 02:36:45PM</p> <p>23 this hypothesis that you are articulating, 02:36:47PM</p> <p>24 it would be support for that hypothesis if 02:36:49PM</p> <p>25 Merck's stock moved in a statistically 02:36:52PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 slightly different. 02:38:08PM</p> <p>3 Would you agree if, 02:38:09PM</p> <p>4 hypothetically, Merck's stock had gone up 02:38:11PM</p> <p>5 statistically significantly on February 02:38:13PM</p> <p>6 8th that that would be supportive of a 02:38:16PM</p> <p>7 hypothesis that Merck-related news was 02:38:18PM</p> <p>8 driving Pharmacia's price decline? 02:38:22PM</p> <p>9 A. Again, it would depend on a lot 02:38:27PM</p> <p>10 of other facts, did you account for other 02:38:29PM</p> <p>11 information that might have been coming 02:38:31PM</p> <p>12 out. You know, I haven't done that 02:38:33PM</p> <p>13 analysis. I'm not sure how carefully 02:38:35PM</p> <p>14 Dr. Feinstein has done the analysis. 02:38:38PM</p> <p>15 But I don't think an 02:38:42PM</p> <p>16 examination of Merck's stock price in and 02:38:44PM</p> <p>17 of itself in a vacuum by itself would be 02:38:48PM</p> <p>18 probative as to whether or not this was 02:38:52PM</p> <p>19 the cause of Pharmacia's stock price 02:38:55PM</p> <p>20 decline on February 8th. 02:38:57PM</p> <p>21 Q. I'm not asking you if it was 02:38:58PM</p> <p>22 solely or wholly, I'm saying, is that a 02:39:01PM</p> <p>23 factor that would have supported a 02:39:03PM</p> <p>24 hypothesis if Merck's stock went up 02:39:05PM</p> <p>25 statistically significantly on February 02:39:08PM</p>                                     |

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 8th, would that be a supportive fact of 02:39:10PM</p> <p>3 the conclusion that Merck-related Vioxx 02:39:13PM</p> <p>4 news was what was driving Pharmacia's 02:39:15PM</p> <p>5 share price on that same day? 02:39:19PM</p> <p>6 MR. WANG: Objection. Asked 02:39:20PM</p> <p>7 and answered. 02:39:22PM</p> <p>8 A. Again, without having looked 02:39:22PM</p> <p>9 into all the other considerations, such as 02:39:29PM</p> <p>10 information that was occurring, and, you 02:39:30PM</p> <p>11 know, was the peer index for Merck the 02:39:33PM</p> <p>12 same as the peer index for Pharmacia, what 02:39:36PM</p> <p>13 was happening in the peer index for 02:39:38PM</p> <p>14 Merck's cohorts. There are a lot of other 02:39:42PM</p> <p>15 things that would have to be taken into 02:39:44PM</p> <p>16 consideration. 02:39:46PM</p> <p>17 So as I sit here, I can't 02:39:46PM</p> <p>18 definitively answer that. 02:39:47PM</p> <p>19 Q. Are you offering an opinion 02:39:47PM</p> <p>20 that Vioxx's performance was not material 02:39:48PM</p> <p>21 to Merck? 02:39:51PM</p> <p>22 A. No. 02:39:54PM</p> <p>23 Q. And I want to show you what I'm 02:39:59PM</p> <p>24 marking as Plaintiffs' Exhibit 512. 02:40:00PM</p> <p>25 (Plaintiffs' Exhibit 512 marked 02:40:03PM</p>                           | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I don't recall the numbers 02:40:59PM</p> <p>3 offhand. 02:41:00PM</p> <p>4 Q. We can put that one back in 02:41:01PM</p> <p>5 front of you. I think it was Exhibit 509. 02:41:03PM</p> <p>6 If you could take a look at it. It is the 02:41:12PM</p> <p>7 February 7th Bear Stearns analyst report, 02:41:14PM</p> <p>8 the last page of 509. 02:41:20PM</p> <p>9 And is it accurate that the 02:41:45PM</p> <p>10 Merck pharmaceutical revenues derived from 02:41:47PM</p> <p>11 Vioxx in 2000 were estimated to be 10.7 02:41:49PM</p> <p>12 percent at least by the Bear Stearns 02:41:54PM</p> <p>13 analyst? 02:41:55PM</p> <p>14 MR. WANG: Objection. 02:41:56PM</p> <p>15 A. That's right. 02:41:57PM</p> <p>16 Q. And the Bear Stearns analysts 02:41:57PM</p> <p>17 are estimating that the 2001 contribution 02:42:00PM</p> <p>18 of pharma revenues from Merck would be 02:42:02PM</p> <p>19 15.4 percent; is that correct? 02:42:06PM</p> <p>20 A. That's what is reported. 02:42:08PM</p> <p>21 Q. And then for 2002 the same 02:42:09PM</p> <p>22 estimate was 17.1 percent? 02:42:11PM</p> <p>23 A. Yes. 02:42:14PM</p> <p>24 Q. Each of those are contributing, 02:42:15PM</p> <p>25 or at least those estimates, each of them 02:42:16PM</p> |
| Page 263                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 265                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 for identification.) 02:40:04PM</p> <p>3 Q. Could you please take a look at 02:40:05PM</p> <p>4 that document. And, for the record, 02:40:07PM</p> <p>5 Exhibit 512 is a Reuters article dated 02:40:09PM</p> <p>6 April 21st, 1999 by Lisa Richwine. If you 02:40:13PM</p> <p>7 look at the last sentence on the first 02:40:19PM</p> <p>8 page, it says "Merck is counting on Vioxx 02:40:21PM</p> <p>9 to help the company weather upcoming 02:40:24PM</p> <p>10 patent expirations on three of its 02:40:26PM</p> <p>11 best-selling drugs." 02:40:29PM</p> <p>12 And I think you just testified 02:40:30PM</p> <p>13 that you are not offering an opinion that 02:40:32PM</p> <p>14 Vioxx was not material to Merck. 02:40:34PM</p> <p>15 Did you look at the 02:40:36PM</p> <p>16 contributions to the bottom line of Merck 02:40:37PM</p> <p>17 from Vioxx sales in the 2000 through 2001 02:40:40PM</p> <p>18 time frame? 02:40:44PM</p> <p>19 A. I haven't studied that, no. 02:40:45PM</p> <p>20 Q. And we looked at that Bear 02:40:47PM</p> <p>21 Stearns analyst report earlier where the 02:40:50PM</p> <p>22 Merck related pharmaceutical sales were in 02:40:52PM</p> <p>23 the 15 to 20 percent range estimated for 02:40:54PM</p> <p>24 2001 and 2002? 02:40:57PM</p> <p>25 MR. WANG: Objection. 02:40:58PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 is over 10 percent, correct? 02:42:18PM</p> <p>3 A. That's correct. 02:42:19PM</p> <p>4 Q. You worked for the SEC for a 02:42:20PM</p> <p>5 while? 02:42:22PM</p> <p>6 A. I did. 02:42:22PM</p> <p>7 Q. As a commissioner? Were you a 02:42:22PM</p> <p>8 commissioner or were you an economist? 02:42:24PM</p> <p>9 A. Chief economist. 02:42:26PM</p> <p>10 Q. Chief economist, that's a 02:42:27PM</p> <p>11 pretty big position. 02:42:27PM</p> <p>12 Are you aware of any SEC 02:42:28PM</p> <p>13 rulings or points that a 10 percent 02:42:31PM</p> <p>14 threshold is often considered as being 02:42:34PM</p> <p>15 material? 02:42:37PM</p> <p>16 A. From a regulatory point of 02:42:37PM</p> <p>17 view, that's correct, but I've never 02:42:39PM</p> <p>18 accepted that as necessarily being 02:42:41PM</p> <p>19 material to investors. 02:42:43PM</p> <p>20 Q. Just as a rule of thumb, that 02:42:45PM</p> <p>21 10 percent is often bandied about as being 02:42:46PM</p> <p>22 material in certain contexts, though; is 02:42:49PM</p> <p>23 that correct? 02:42:55PM</p> <p>24 MR. WANG: Objection. 02:42:55PM</p> <p>25 A. It may be, but, again, it is 02:42:56PM</p>                                                                       |

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| Page 266                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 268                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 not probative -- to me it is not probative 02:42:57PM</p> <p>3 of whether information is material to 02:42:59PM</p> <p>4 investors. It is more a rule of thumb 02:43:01PM</p> <p>5 used for regulatory purposes. 02:43:04PM</p> <p>6 Q. In any event, you are not 02:43:05PM</p> <p>7 offering an opinion, or as we sit here 02:43:07PM</p> <p>8 today, you don't plan to offer an opinion 02:43:10PM</p> <p>9 that Vioxx sales in early 2001 were not 02:43:12PM</p> <p>10 material to Merck's business? 02:43:14PM</p> <p>11 A. I'm sorry, the double 02:43:19PM</p> <p>12 negatives -- 02:43:21PM</p> <p>13 Q. I'm sorry, it is getting late. 02:43:21PM</p> <p>14 You are not offering an opinion 02:43:22PM</p> <p>15 that Vioxx was not material -- well, I'm 02:43:24PM</p> <p>16 doing it again, aren't I? 02:43:27PM</p> <p>17 Are you offering an opinion 02:43:29PM</p> <p>18 that Vioxx sales in 2001 were not material 02:43:30PM</p> <p>19 to Merck's business? 02:43:34PM</p> <p>20 A. I am not. 02:43:37PM</p> <p>21 Q. We still ended up with a double 02:43:39PM</p> <p>22 negative, I think. 02:43:42PM</p> <p>23 In your opening report you did 02:44:24PM</p> <p>24 analyze the 6th and 7th cumulatively; is 02:44:26PM</p> <p>25 that correct? 02:44:30PM</p>                           | <p>1 LEHN - CONFIDENTIAL</p> <p>2 correct? 02:45:13PM</p> <p>3 MR. WANG: Objection. 02:45:13PM</p> <p>4 A. I'm not sure I ever actually 02:45:14PM</p> <p>5 eyeballed it per se. It certainly had no 02:45:16PM</p> <p>6 bearing on decisions I made about the 02:45:22PM</p> <p>7 proper way to study this issue. 02:45:24PM</p> <p>8 Q. But ultimately your regression 02:45:25PM</p> <p>9 analysis and event study revealed that the 02:45:27PM</p> <p>10 decline on February 8th was statistically 02:45:28PM</p> <p>11 significant, correct? 02:45:31PM</p> <p>12 A. That's correct. 02:45:32PM</p> <p>13 Q. And it also revealed that the 02:45:32PM</p> <p>14 three-day window of February 6th through 02:45:33PM</p> <p>15 February 8th was also statistically 02:45:36PM</p> <p>16 significant, correct? 02:45:38PM</p> <p>17 A. Again, as I indicated before, 02:45:39PM</p> <p>18 that if you look at the three days in 02:45:40PM</p> <p>19 tandem, but then when you look at the 02:45:43PM</p> <p>20 individual days, the only day that was 02:45:45PM</p> <p>21 statistically significant was February 02:45:45PM</p> <p>22 8th, and that, again, was irrelevant for 02:45:47PM</p> <p>23 my opinions regarding loss causation and 02:45:50PM</p> <p>24 materiality. 02:45:54PM</p> <p>25 Q. Would you also agree that -- 02:45:54PM</p>                                           |
| Page 267                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 269                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Yes. 02:44:30PM</p> <p>3 Q. And why did you analyze the 6th 02:44:31PM</p> <p>4 and 7th cumulatively as part of your 02:44:32PM</p> <p>5 opening report? 02:44:34PM</p> <p>6 A. Frankly, anticipating that that 02:44:34PM</p> <p>7 was potentially going to be an area of 02:44:37PM</p> <p>8 inquiry by the parties in this litigation, 02:44:39PM</p> <p>9 I thought it was prudent to look at the 02:44:43PM</p> <p>10 two days. 02:44:46PM</p> <p>11 Q. But you didn't look at the 02:44:47PM</p> <p>12 three days, 6th, 7th and 8th, as part of 02:44:48PM</p> <p>13 your opening report, correct? 02:44:52PM</p> <p>14 A. That is correct. 02:44:53PM</p> <p>15 Q. And you didn't look at it even 02:44:53PM</p> <p>16 though you were aware there was an analyst 02:44:55PM</p> <p>17 report published on the 8th entitled 02:44:58PM</p> <p>18 "CLASS Flunks Out"; is that correct? 02:44:59PM</p> <p>19 A. That's correct. But as I 02:45:00PM</p> <p>20 indicated earlier, that is irrelevant for 02:45:01PM</p> <p>21 my consideration of loss causation and 02:45:03PM</p> <p>22 materiality. 02:45:05PM</p> <p>23 Q. And when you eyeballed the 02:45:05PM</p> <p>24 decline on February 8th, it looked like it 02:45:08PM</p> <p>25 was a statistically significant decline, 02:45:11PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 and I'm moving on to a new topic now, so I 02:45:57PM</p> <p>3 will ask the question differently -- would 02:46:01PM</p> <p>4 you agree that alleged misrepresentations 02:46:02PM</p> <p>5 in the context of a securities suit and an 02:46:06PM</p> <p>6 analysis of whether it impacted the 02:46:10PM</p> <p>7 market, that misrepresentations can in 02:46:12PM</p> <p>8 certain circumstances maintain inflation 02:46:14PM</p> <p>9 as opposed to introducing new inflation 02:46:16PM</p> <p>10 into the marketplace? 02:46:19PM</p> <p>11 A. Sure. 02:46:20PM</p> <p>12 Q. And when you look at alleged 02:46:21PM</p> <p>13 misrepresentations in a particular case 02:46:25PM</p> <p>14 such as this one, it doesn't rule out 02:46:28PM</p> <p>15 materiality and loss causation just 02:46:31PM</p> <p>16 because the stock price didn't increase on 02:46:34PM</p> <p>17 the date of the misrepresentations; is 02:46:36PM</p> <p>18 that correct? 02:46:38PM</p> <p>19 A. That is correct. Again, I 02:46:38PM</p> <p>20 think there is a distinction between 02:46:41PM</p> <p>21 affirmative misrepresentations and 02:46:43PM</p> <p>22 omissions. 02:46:46PM</p> <p>23 Q. So if there are facts like in 02:46:47PM</p> <p>24 this case where there are five facts 02:46:51PM</p> <p>25 alleged to be omitted, you would agree 02:46:53PM</p> |

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| <p style="text-align: right;">Page 270</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 that you could still have loss causation 02:46:55PM</p> <p>3 and materiality -- or strike that. 02:46:56PM</p> <p>4 You would agree that in an 02:47:00PM</p> <p>5 omissions case the appropriate way or an 02:47:02PM</p> <p>6 appropriate way to test for materiality 02:47:04PM</p> <p>7 and loss causation is to look when the 02:47:07PM</p> <p>8 allegedly omitted facts are disclosed to 02:47:09PM</p> <p>9 the marketplace and analyze the stock 02:47:12PM</p> <p>10 price movement after the disclosure of the 02:47:15PM</p> <p>11 omitted facts; is that correct? 02:47:17PM</p> <p>12 A. That's correct. 02:47:18PM</p> <p>13 Q. And if -- and, again, this will 02:47:19PM</p> <p>14 be a hypothetical context, because I don't 02:47:24PM</p> <p>15 want to get into a big debate -- if you 02:47:26PM</p> <p>16 have a decline, a statistically 02:47:28PM</p> <p>17 significant decline following the 02:47:32PM</p> <p>18 revelation of allegedly omitted facts, you 02:47:34PM</p> <p>19 can have loss causation and materiality 02:47:37PM</p> <p>20 regardless of whether on the dates of the 02:47:40PM</p> <p>21 alleged misrepresentations the stock price 02:47:43PM</p> <p>22 moved upwardly; is that correct? 02:47:45PM</p> <p>23 A. As a theoretical matter, that's 02:47:47PM</p> <p>24 correct. 02:47:50PM</p> <p>25 Q. I want to show you what I'm 02:47:50PM</p> | <p style="text-align: right;">Page 272</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 "These results will likely slow the growth 02:49:59PM</p> <p>3 of the COX-2 class until more conclusive 02:50:01PM</p> <p>4 scientific evidence is demonstrated." 02:50:05PM</p> <p>5 Would you agree that that would 02:50:07PM</p> <p>6 be bad news for Pharmacia? 02:50:08PM</p> <p>7 A. You know, as a general matter, 02:50:14PM</p> <p>8 it would not be -- presumably would not be 02:50:29PM</p> <p>9 good news. Whether it is bad news depends 02:50:33PM</p> <p>10 on whether it's news, was this new 02:50:36PM</p> <p>11 information or was it simply reiterating 02:50:41PM</p> <p>12 what the market already had anticipated, 02:50:45PM</p> <p>13 in which case it may be neutral or bad, 02:50:47PM</p> <p>14 but it is not necessarily new. 02:50:51PM</p> <p>15 Q. Now, Pharmacia's biggest 02:50:53PM</p> <p>16 selling drug was Celebrex at this time 02:50:56PM</p> <p>17 period, right? 02:50:58PM</p> <p>18 A. That's my understanding. 02:50:58PM</p> <p>19 Q. And if you were going to have 02:50:59PM</p> <p>20 the growth of your biggest-selling drug 02:51:01PM</p> <p>21 slowed, that's bad -- I won't use the word 02:51:03PM</p> <p>22 "news" -- that's bad, not good, correct? 02:51:06PM</p> <p>23 A. Again, not to nitpick, but 02:51:08PM</p> <p>24 there is one caveat just as a purely 02:51:14PM</p> <p>25 conceptual matter. There is not an 02:51:16PM</p> |
| <p style="text-align: right;">Page 271</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 marking as Plaintiffs' Exhibit 513. 02:48:24PM</p> <p>3 (Plaintiffs' Exhibit 513 marked 02:48:26PM</p> <p>4 for identification.) 02:48:28PM</p> <p>5 Q. Could you please take a look at 02:48:51PM</p> <p>6 that document. For the record, 02:48:53PM</p> <p>7 Plaintiffs' Exhibit 513 is a Salomon Smith 02:48:58PM</p> <p>8 Barney analyst report dated February 7th, 02:49:03PM</p> <p>9 2001 and it bears Bates numbers DEFEX 02:49:05PM</p> <p>10 005603 through 606. 02:49:11PM</p> <p>11 I would ask you if you 02:49:25PM</p> <p>12 recognize this as an analyst report you 02:49:26PM</p> <p>13 considered as part of your opinions in 02:49:28PM</p> <p>14 this case. 02:49:29PM</p> <p>15 A. I do. 02:49:29PM</p> <p>16 Q. And this is an analyst report 02:49:30PM</p> <p>17 that was dated February 7th, 2001 and it 02:49:33PM</p> <p>18 was issued by Mark Striker and George 02:49:37PM</p> <p>19 Grofik of Salomon Smith Barney? 02:49:41PM</p> <p>20 A. Yes, that's correct. 02:49:46PM</p> <p>21 Q. And in the summary at the 02:49:47PM</p> <p>22 beginning of the report there's six arrows 02:49:49PM</p> <p>23 or bullet points; is that correct? 02:49:53PM</p> <p>24 A. That's correct. 02:49:55PM</p> <p>25 Q. And the fifth bullet point says 02:49:56PM</p>                                                                                                            | <p style="text-align: right;">Page 273</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 absolute answer to that, because I teach a 02:51:17PM</p> <p>3 valuation course, and one of the things I 02:51:19PM</p> <p>4 teach students is that if you have a 02:51:21PM</p> <p>5 product that is destroying value, meaning 02:51:23PM</p> <p>6 that the returns you are getting on it are 02:51:27PM</p> <p>7 not beating the cost of capital for that 02:51:30PM</p> <p>8 product line, then slow growth can 02:51:32PM</p> <p>9 actually be a good thing, you will be 02:51:34PM</p> <p>10 destroying value at a lesser rate. 02:51:36PM</p> <p>11 So as an absolute answer, 02:51:38PM</p> <p>12 growth is not always good. Now, I'm not 02:51:40PM</p> <p>13 saying that that was the case here. But 02:51:43PM</p> <p>14 I'm just saying I can't give you an 02:51:44PM</p> <p>15 absolute answer to your question. 02:51:46PM</p> <p>16 Q. Let's confine our answer, then, 02:51:47PM</p> <p>17 to Celebrex, Pharmacia, 2001. The fact 02:51:49PM</p> <p>18 that the growth of Celebrex was being 02:51:54PM</p> <p>19 slowed, that was bad for Pharmacia, 02:51:59PM</p> <p>20 correct? 02:52:01PM</p> <p>21 A. I would presume that 02:52:04PM</p> <p>22 expectations of lower growth would not be 02:52:07PM</p> <p>23 viewed as a positive event. 02:52:10PM</p> <p>24 Q. Okay, I will take that. 02:52:11PM</p> <p>25 MR. WANG: Do you want to take 02:52:44PM</p>                  |

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| <p style="text-align: right;">Page 274</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 a break if you are shifting topics? 02:52:45PM</p> <p>3 MR. SAHAM: Sure, we can take a 02:52:47PM</p> <p>4 break. 02:52:49PM</p> <p>5 THE VIDEOGRAPHER: The time is 02:52:50PM</p> <p>6 approximately 2:52 p.m. This is the end 02:52:51PM</p> <p>7 of media number four. We are off the 02:52:53PM</p> <p>8 record. 02:52:55PM</p> <p>9 (Recess taken.) 02:52:55PM</p> <p>10 THE VIDEOGRAPHER: The time is 03:09:43PM</p> <p>11 approximately 3:09 p.m. This is the 03:09:45PM</p> <p>12 beginning of media number five. We are on 03:09:48PM</p> <p>13 the record. 03:09:50PM</p> <p>14 BY MR. SAHAM: 03:10:18PM</p> <p>15 Q. Dr. Lehn, I want to show you 03:10:18PM</p> <p>16 what I'm marking as Plaintiffs' Exhibit 03:10:21PM</p> <p>17 514. Could you please take a look at that 03:10:23PM</p> <p>18 document. 03:10:27PM</p> <p>19 (Plaintiffs' Exhibit 514 marked 03:10:28PM</p> <p>20 for identification.) 03:10:30PM</p> <p>21 Q. And, for the record, 03:10:33PM</p> <p>22 Plaintiffs' Exhibit 514 is an analyst 03:10:35PM</p> <p>23 report from Credit Suisse First Boston 03:10:38PM</p> <p>24 dated February 8th, 2001 and it bears 03:10:42PM</p> <p>25 Bates numbers DEFEX 005572 through 76. 03:10:45PM</p>                                                                      | <p style="text-align: right;">Page 276</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 analyst reports that made that distinction 03:12:06PM</p> <p>3 that the main benefit to Celebrex was in 03:12:09PM</p> <p>4 non-aspirin using -- when in comparison to 03:12:14PM</p> <p>5 non-aspirin using -- that's a bad 03:12:18PM</p> <p>6 question. 03:12:20PM</p> <p>7 Do you recall seeing that 03:12:20PM</p> <p>8 anywhere earlier than February 8th, 2001 03:12:22PM</p> <p>9 being disseminated to the market that the 03:12:24PM</p> <p>10 main benefit of Celebrex was when it was 03:12:26PM</p> <p>11 compared to non-aspirin using ibuprofen 03:12:28PM</p> <p>12 takers? 03:12:31PM</p> <p>13 A. Well, again, the materials that 03:12:33PM</p> <p>14 were posted on the FDA website on February 03:12:36PM</p> <p>15 6th had the information that would 03:12:38PM</p> <p>16 basically be relevant to that issue. 03:12:44PM</p> <p>17 Q. And in what form did it have 03:12:46PM</p> <p>18 that information? 03:12:48PM</p> <p>19 A. Well, my recollection is it was 03:12:49PM</p> <p>20 in the statistical reviewer's briefing 03:12:50PM</p> <p>21 document. 03:12:53PM</p> <p>22 Q. And certainly in reading the 03:12:55PM</p> <p>23 JAMA article you wouldn't know that; is 03:12:58PM</p> <p>24 that correct? 03:13:00PM</p> <p>25 MR. WANG: Objection. 03:13:00PM</p>                          |
| <p style="text-align: right;">Page 275</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 And I ask you if you recognize 03:10:55PM</p> <p>3 this as one of the analyst reports you 03:10:56PM</p> <p>4 looked at as part of the preparation of 03:10:58PM</p> <p>5 your opinions in this case. 03:11:00PM</p> <p>6 A. Yes, it is. 03:11:01PM</p> <p>7 Q. And turning to page -- the 03:11:02PM</p> <p>8 bottom of page 83 and the top of page 84 03:11:09PM</p> <p>9 of the report, the bottom sentence on 83 03:11:12PM</p> <p>10 says "Celebrex shows significant 03:11:16PM</p> <p>11 statistical improvement in 03:11:18PM</p> <p>12 gastrointestinal side effects, principally 03:11:20PM</p> <p>13 on the non-aspirin ibuprofen treatment 03:11:24PM</p> <p>14 arm." 03:11:27PM</p> <p>15 Do you see that? 03:11:27PM</p> <p>16 A. I do. 03:11:28PM</p> <p>17 Q. And is it your opinion that 03:11:28PM</p> <p>18 that was not new information disseminated 03:11:30PM</p> <p>19 on February 8th, 2001? 03:11:32PM</p> <p>20 A. Well, my recollection is that 03:11:36PM</p> <p>21 the data that was released on the morning 03:11:51PM</p> <p>22 of February 6th certainly would have the 03:11:55PM</p> <p>23 underlying evidence for that statement. 03:11:58PM</p> <p>24 Q. But prior to this analyst 03:12:02PM</p> <p>25 report do you recall there being any other 03:12:04PM</p> | <p style="text-align: right;">Page 277</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Reading the September 30th, 03:13:01PM</p> <p>3 2000 JAMA article you wouldn't know that 03:13:03PM</p> <p>4 any benefit was in non-aspirin using 03:13:05PM</p> <p>5 ibuprofen takers? 03:13:07PM</p> <p>6 MR. WANG: Objection. 03:13:08PM</p> <p>7 A. I would have to review the JAMA 03:13:09PM</p> <p>8 article again. 03:13:11PM</p> <p>9 Q. And reading down a couple of 03:13:13PM</p> <p>10 paragraphs here on page 84, it says "After 03:13:15PM</p> <p>11 nearly seven hours of discussion, the FDA 03:13:18PM</p> <p>12 panel decided that the current label for 03:13:21PM</p> <p>13 Celebrex appears to adequately describe 03:13:23PM</p> <p>14 relative gastrointestinal properties 03:13:25PM</p> <p>15 relative to NSAIDs." Do you see that? 03:13:28PM</p> <p>16 A. I do. 03:13:30PM</p> <p>17 Q. Do you think it has any -- 03:13:31PM</p> <p>18 strike that. 03:13:32PM</p> <p>19 Does it have any impact on your 03:13:33PM</p> <p>20 loss causation and materiality opinions 03:13:34PM</p> <p>21 that a panel of FDA experts took seven 03:13:37PM</p> <p>22 hours to determine whether or not they 03:13:40PM</p> <p>23 were going to make a recommendation with 03:13:42PM</p> <p>24 respect to a Celebrex label change? 03:13:44PM</p> <p>25 A. It has no impact on my opinion. 03:13:47PM</p> |

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| Page 278                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 280                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. So the fact that it took seven 03:13:50PM</p> <p>3 hours for experts to figure out what 03:13:53PM</p> <p>4 particular information meant as far as a 03:13:55PM</p> <p>5 label change, that couldn't be a factor to 03:13:58PM</p> <p>6 consider in determining how quickly the 03:14:00PM</p> <p>7 market could absorb this information? 03:14:02PM</p> <p>8 MR. WANG: Objection. 03:14:04PM</p> <p>9 Mischaracterizes the evidence. 03:14:05PM</p> <p>10 A. I think one thing that one has 03:14:06PM</p> <p>11 to be careful about is when you say this 03:14:12PM</p> <p>12 information, for purposes of loss 03:14:14PM</p> <p>13 causation, this information is actually 03:14:16PM</p> <p>14 rather straightforward and it was in the 03:14:19PM</p> <p>15 early pages of the statistical reviewer's 03:14:20PM</p> <p>16 briefing document and it was the 03:14:23PM</p> <p>17 information that corrected the five 03:14:24PM</p> <p>18 alleged misrepresentations as described in 03:14:28PM</p> <p>19 the second set of interrogatory responses. 03:14:29PM</p> <p>20 That wasn't very complicated. 03:14:32PM</p> <p>21 And one can quickly realize that that 03:14:34PM</p> <p>22 information was in the tables of the 03:14:38PM</p> <p>23 statistical review. I'm sure that the FDA 03:14:40PM</p> <p>24 panel, with the different objective, they 03:14:43PM</p> <p>25 had to make a decision with respect to 03:14:45PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 read that necessarily first, correct? 03:15:39PM</p> <p>3 A. Well, you know, again, I think 03:15:42PM</p> <p>4 that you have to think about what analysts 03:15:46PM</p> <p>5 do. They would have an eye towards what 03:15:48PM</p> <p>6 they think is the salient information and 03:15:52PM</p> <p>7 they are not viewing this information in a 03:15:54PM</p> <p>8 vacuum. They have some cumulative 03:15:57PM</p> <p>9 knowledge of the issues, and they 03:15:59PM</p> <p>10 presumably, if they are good analysts, are 03:16:00PM</p> <p>11 going to know the history of the issues. 03:16:03PM</p> <p>12 And when they suddenly see 03:16:05PM</p> <p>13 these documents, I'm this way when it 03:16:07PM</p> <p>14 comes to finance reports, you often get 03:16:08PM</p> <p>15 big, thick valuation reports, but you can 03:16:10PM</p> <p>16 quickly cut to the chase by going to the 03:16:12PM</p> <p>17 salient information and you don't have to 03:16:14PM</p> <p>18 wade through every word of every page to 03:16:20PM</p> <p>19 understanding what is going on. 03:16:23PM</p> <p>20 And with respect to the 03:16:24PM</p> <p>21 punchlines of the materials and the FDA 03:16:25PM</p> <p>22 materials with respect to the alleged 03:16:28PM</p> <p>23 corrective disclosures, it wasn't all that 03:16:30PM</p> <p>24 complicated. 03:16:32PM</p> <p>25 Q. And you are not a medical 03:16:33PM</p> |
| Page 279                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 281                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 making a label change prudently, wanted to 03:14:47PM</p> <p>3 have a lot of discussion. That is a 03:14:50PM</p> <p>4 separate issue as to the information 03:14:52PM</p> <p>5 pertaining to the alleged corrective 03:14:55PM</p> <p>6 disclosures. 03:14:56PM</p> <p>7 Q. And you are not offering an 03:14:57PM</p> <p>8 opinion as to the order -- if someone was 03:14:58PM</p> <p>9 to put themselves in the shoes of someone 03:15:01PM</p> <p>10 trying to download the information from 03:15:03PM</p> <p>11 the FDA website, on or about February 6th, 03:15:05PM</p> <p>12 2001, you are not offering an opinion that 03:15:09PM</p> <p>13 the statistical reviewer's report was like 03:15:12PM</p> <p>14 the top document that you would get if you 03:15:14PM</p> <p>15 were downloading the information relating 03:15:16PM</p> <p>16 to the Celebrex Advisory Committee that 03:15:19PM</p> <p>17 was made available on or about February 03:15:22PM</p> <p>18 6th, 2001? 03:15:24PM</p> <p>19 A. I'm not sure what you mean by 03:15:25PM</p> <p>20 "the top document." 03:15:27PM</p> <p>21 Q. Well, if an analyst or anybody 03:15:28PM</p> <p>22 else was clicking on the FDA website to 03:15:30PM</p> <p>23 get the Advisory Committee materials, they 03:15:32PM</p> <p>24 wouldn't necessarily get the statistical 03:15:35PM</p> <p>25 reviewer's report first, they wouldn't 03:15:37PM</p>                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 doctor, though, correct? 03:16:34PM</p> <p>3 A. I am not. 03:16:36PM</p> <p>4 Q. You are not a 03:16:36PM</p> <p>5 gastroenterologist? 03:16:37PM</p> <p>6 A. That's correct. 03:16:39PM</p> <p>7 Q. You are not an expert in FDA 03:16:39PM</p> <p>8 advisory proceedings? 03:16:41PM</p> <p>9 A. That's correct. But I do 03:16:42PM</p> <p>10 understand what the allegations are and I 03:16:45PM</p> <p>11 do understand where the corrective 03:16:47PM</p> <p>12 disclosures were. 03:16:50PM</p> <p>13 Q. There were no iPhones in 2001, 03:16:51PM</p> <p>14 correct? 03:16:55PM</p> <p>15 A. I don't believe so. 03:16:57PM</p> <p>16 Q. Were there BlackBerries in 03:16:58PM</p> <p>17 2001? 03:17:02PM</p> <p>18 A. I don't know. I know there 03:17:02PM</p> <p>19 were cell phones back in 2001. 03:17:03PM</p> <p>20 Q. Those big ones though, right, 03:17:05PM</p> <p>21 those big gray ones? 03:17:07PM</p> <p>22 A. I don't recall. 03:17:07PM</p> <p>23 Q. But there were no iPhones back 03:17:11PM</p> <p>24 in 2001, we can agree on that? 03:17:13PM</p> <p>25 MR. WANG: Objection, lacks 03:17:15PM</p>                                                                                                                                                                                                                                                                                            |

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| Page 282                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 284                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 foundation. 03:17:17PM</p> <p>3 A. I don't think there were, no. 03:17:17PM</p> <p>4 Q. And if you were an analyst that 03:17:18PM</p> <p>5 was sitting listening to Mr. Hassan on 03:17:22PM</p> <p>6 February 6th at the Merrill Lynch 03:17:28PM</p> <p>7 conference, you couldn't have been back at 03:17:30PM</p> <p>8 your desktop clicking on the Internet to 03:17:31PM</p> <p>9 try to get the Advisory Committee reports, 03:17:34PM</p> <p>10 correct? 03:17:36PM</p> <p>11 A. I don't know. I don't know 03:17:40PM</p> <p>12 what the technology of the analysts were 03:17:41PM</p> <p>13 at that point in time. But analysts also 03:17:45PM</p> <p>14 have staffs, and there could be a staff 03:17:47PM</p> <p>15 person in New York tracking information 03:17:50PM</p> <p>16 down for the analyst if he was unable to 03:17:52PM</p> <p>17 access the particular site at that moment 03:17:55PM</p> <p>18 in time. 03:17:59PM</p> <p>19 And I think it is just, again, 03:18:01PM</p> <p>20 ludicrous to think that for a company with 03:18:03PM</p> <p>21 a market cap of Pharmacia and the analyst 03:18:05PM</p> <p>22 coverage that it has, that somehow the 03:18:08PM</p> <p>23 information that was released on the FDA 03:18:10PM</p> <p>24 website would escape unnoticed for several 03:18:12PM</p> <p>25 days. That to me is just not a credible 03:18:14PM</p>   | <p>1 LEHN - CONFIDENTIAL</p> <p>2 this earlier, there was no, as far as I 03:19:14PM</p> <p>3 know, no new information that was being 03:19:17PM</p> <p>4 released by Mr. Hassan in that conference 03:19:21PM</p> <p>5 that he was -- insofar that he was 03:19:23PM</p> <p>6 reporting the results from the JAMA 03:19:27PM</p> <p>7 publication that was information that had 03:19:29PM</p> <p>8 already been in the public domain. 03:19:30PM</p> <p>9 Secondly is if one assumes 03:19:36PM</p> <p>10 that the market for the security is 03:19:38PM</p> <p>11 efficient, by definition that means that 03:19:39PM</p> <p>12 all public information is reflected in the 03:19:40PM</p> <p>13 security price and new information is 03:19:43PM</p> <p>14 rapidly reflected in the security price. 03:19:45PM</p> <p>15 Q. You are not offering an opinion 03:19:47PM</p> <p>16 in this case that the company's 03:19:49PM</p> <p>17 informative censoring, depletion of 03:19:52PM</p> <p>18 susceptibles rationale for the six-month 03:19:55PM</p> <p>19 data that was posted on the Internet on 03:19:58PM</p> <p>20 February 6th, that that information was 03:20:00PM</p> <p>21 not material? Are you offering that 03:20:01PM</p> <p>22 opinion? 03:20:07PM</p> <p>23 A. I haven't formed an opinion as 03:20:07PM</p> <p>24 to whether that was material or not. But 03:20:09PM</p> <p>25 it is irrelevant for determining whether 03:20:13PM</p> |
| Page 283                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 285                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 position. 03:18:17PM</p> <p>3 Q. Is it your opinion that the 03:18:17PM</p> <p>4 company briefing document escaped 03:18:18PM</p> <p>5 unnoticed or had no impact on the market's 03:18:20PM</p> <p>6 view of the disclosure on February 6th? 03:18:22PM</p> <p>7 MR. WANG: Objection, compound. 03:18:25PM</p> <p>8 A. That briefing document was part 03:18:26PM</p> <p>9 of the total mix of information in the 03:18:29PM</p> <p>10 market on that day. But what matters is 03:18:33PM</p> <p>11 the alleged corrective disclosures. They 03:18:37PM</p> <p>12 would be relatively easy for certainly an 03:18:41PM</p> <p>13 analyst who covers this industry to 03:18:44PM</p> <p>14 observe and they wouldn't have to labor 03:18:47PM</p> <p>15 through hundreds of pages to identify that 03:18:49PM</p> <p>16 information. 03:18:51PM</p> <p>17 Q. If the company was still 03:18:52PM</p> <p>18 espousing the six-month data as being the 03:18:54PM</p> <p>19 appropriate data and JAMA, a peer-reviewed 03:18:57PM</p> <p>20 journal, had previously published the 03:19:02PM</p> <p>21 six-month data, would those facts be 03:19:03PM</p> <p>22 relevant to how quickly the market would 03:19:05PM</p> <p>23 disseminate information relating to 03:19:07PM</p> <p>24 another data set or a longer data set? 03:19:09PM</p> <p>25 A. Well, again, we talked about 03:19:12PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 or not the alleged corrective disclosures 03:20:17PM</p> <p>3 caused losses to the investors in 03:20:20PM</p> <p>4 Pharmacia. 03:20:22PM</p> <p>5 Q. Well, if it was material, 03:20:23PM</p> <p>6 hypothetically, since you haven't figured 03:20:24PM</p> <p>7 it out one way or the other, if you went 03:20:26PM</p> <p>8 back and you determined that that 03:20:28PM</p> <p>9 informative censoring stuff that the 03:20:30PM</p> <p>10 company said in the briefing document was 03:20:33PM</p> <p>11 material, the fact that the next day the 03:20:34PM</p> <p>12 company no longer articulated or no longer 03:20:38PM</p> <p>13 presented the six-month data, it was just 03:20:41PM</p> <p>14 the twelve-month data that was presented 03:20:44PM</p> <p>15 at the Advisory Committee, could that be a 03:20:47PM</p> <p>16 corrective disclosure correcting the 03:20:49PM</p> <p>17 material impact of the informative 03:20:54PM</p> <p>18 censoring hypothesis that was put forth in 03:20:56PM</p> <p>19 the company's briefing document on 03:21:00PM</p> <p>20 February 6th? 03:21:01PM</p> <p>21 MR. WANG: Objection to form. 03:21:02PM</p> <p>22 A. I'm sorry to make you do this, 03:21:03PM</p> <p>23 but I didn't understand the question. 03:21:06PM</p> <p>24 Q. You would agree with me if the 03:21:07PM</p> <p>25 company's rationale on February 6th, they 03:21:11PM</p>                   |

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CONFIDENTIAL

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| <p style="text-align: right;">Page 286</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 said that the six-month data -- and let's 03:21:14PM</p> <p>3 do it in little chunks to make sure we are 03:21:16PM</p> <p>4 on the same page. 03:21:16PM</p> <p>5 In Exhibit 70, the briefing 03:21:18PM</p> <p>6 document, they say because of informative 03:21:19PM</p> <p>7 censoring, they -- being the company -- 03:21:22PM</p> <p>8 say because of informative censoring and 03:21:25PM</p> <p>9 because of depletion of susceptibles, the 03:21:26PM</p> <p>10 six-month data is the valid data; are you 03:21:30PM</p> <p>11 with me on that? 03:21:31PM</p> <p>12 A. I am. 03:21:32PM</p> <p>13 Q. So if the market viewed that 03:21:32PM</p> <p>14 informative censoring rationale as being 03:21:34PM</p> <p>15 material, and materially positive, because 03:21:37PM</p> <p>16 it was an explanation as to why the JAMA 03:21:39PM</p> <p>17 data was the right data to focus on, if 03:21:41PM</p> <p>18 the market on the 6th viewed that as 03:21:44PM</p> <p>19 positive, the fact that that explanation 03:21:47PM</p> <p>20 was no longer articulated or maintained at 03:21:50PM</p> <p>21 the Advisory Committee by either the 03:21:52PM</p> <p>22 company or the FDA, would that fact on 03:21:54PM</p> <p>23 February 7th be corrective of the 03:21:58PM</p> <p>24 informative censoring information that was 03:22:02PM</p> <p>25 articulated in the company's briefing 03:22:05PM</p> | <p style="text-align: right;">Page 288</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 THE VIDEOGRAPHER: The time is 03:24:08PM</p> <p>3 approximately 3:24 p.m. We are back on 03:24:09PM</p> <p>4 the record. 03:24:12PM</p> <p>5 BY MR. SAHAM: 03:24:12PM</p> <p>6 Q. Dr. Lehn, I'm showing you what 03:24:12PM</p> <p>7 I'm marking as Plaintiffs' Exhibit 515, 03:24:14PM</p> <p>8 which, for the record, bears Bates numbers 03:24:19PM</p> <p>9 DEFEX 009148 through 149. And this is a 03:24:21PM</p> <p>10 UBS Warburg February 8th, 2001 analyst 03:24:27PM</p> <p>11 report. 03:24:30PM</p> <p>12 (Plaintiffs' Exhibit 515 marked 03:24:30PM</p> <p>13 for identification.) 03:24:32PM</p> <p>14 Q. Is this, again, one of the 03:24:33PM</p> <p>15 analyst reports you considered in reaching 03:24:35PM</p> <p>16 your opinions in this case? 03:24:37PM</p> <p>17 A. Yes, it is. 03:24:38PM</p> <p>18 Q. And I would like to direct your 03:24:39PM</p> <p>19 attention to the second page of the 03:24:41PM</p> <p>20 analyst report, Exhibit 1. Do you see 03:24:42PM</p> <p>21 that? 03:24:44PM</p> <p>22 A. I do. 03:24:44PM</p> <p>23 Q. And there's a table there and 03:24:45PM</p> <p>24 it is comparing VIGOR and CLASS, is that 03:24:49PM</p> <p>25 correct, and the data derived from each? 03:24:52PM</p>        |
| <p style="text-align: right;">Page 287</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 document? 03:22:06PM</p> <p>3 MR. WANG: Objection. 03:22:07PM</p> <p>4 A. I'm not sure what you mean by 03:22:08PM</p> <p>5 "corrective" in that context. It is 03:22:13PM</p> <p>6 certainly not corrective of the alleged 03:22:17PM</p> <p>7 corrective disclosures released on 03:22:19PM</p> <p>8 February 6th. 03:22:21PM</p> <p>9 Q. But could it be new information 03:22:22PM</p> <p>10 that would be salient in analyzing whether 03:22:23PM</p> <p>11 the six-month data or twelve-month data 03:22:25PM</p> <p>12 was the appropriate data to take account 03:22:28PM</p> <p>13 of in determining whether or not the 03:22:30PM</p> <p>14 company was going to get a label change? 03:22:31PM</p> <p>15 A. Well, at a purely theoretical 03:22:34PM</p> <p>16 level, perhaps. But that's irrelevant for 03:22:39PM</p> <p>17 determining whether the alleged corrective 03:22:41PM</p> <p>18 disclosures caused losses for investors. 03:22:43PM</p> <p>19 That's a separate issue, distinct issue. 03:22:46PM</p> <p>20 MR. WANG: Can we go off the 03:23:04PM</p> <p>21 record for a second. 03:23:06PM</p> <p>22 THE VIDEOGRAPHER: The time is 03:23:07PM</p> <p>23 approximately 3:23 p.m. We are off the 03:23:08PM</p> <p>24 record. 03:23:10PM</p> <p>25 (Discussion off the record.) 03:23:10PM</p>                                                                                             | <p style="text-align: right;">Page 289</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. It appears to be doing that. 03:24:55PM</p> <p>3 Q. And if you look at primary 03:24:56PM</p> <p>4 endpoint, do you see that, it is maybe the 03:24:59PM</p> <p>5 sixth one down? 03:25:01PM</p> <p>6 A. I do, yes. 03:25:02PM</p> <p>7 Q. And then if you go over to 03:25:03PM</p> <p>8 CLASS, it says that the p-value is 0.09? 03:25:05PM</p> <p>9 A. Yes. 03:25:08PM</p> <p>10 Q. And this analyst from UBS 03:25:09PM</p> <p>11 Warburg even on February 8th is utilizing 03:25:12PM</p> <p>12 the p-value from six months; do you see 03:25:14PM</p> <p>13 that? 03:25:16PM</p> <p>14 A. I do. 03:25:16PM</p> <p>15 Q. Because before we looked at the 03:25:17PM</p> <p>16 actual p-value, if you look at the entire 03:25:19PM</p> <p>17 study data was 0.45? 03:25:21PM</p> <p>18 A. Yes. 03:25:25PM</p> <p>19 Q. So is it fair to say that the 03:25:25PM</p> <p>20 fact that this analyst is still recounting 03:25:27PM</p> <p>21 the six-month p-value three days after the 03:25:29PM</p> <p>22 disclosure of the actual entire study 03:25:35PM</p> <p>23 p-value of 0.45 in the FDA reviewer 03:25:39PM</p> <p>24 reports, that there may have been some 03:25:43PM</p> <p>25 confusion among analysts and market 03:25:44PM</p> |

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| Page 290                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 292                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 participants as to what the study data 03:25:47PM</p> <p>3 revealed? 03:25:49PM</p> <p>4 MR. WANG: Objection. 03:25:50PM</p> <p>5 A. Well, two things. One is that 03:25:51PM</p> <p>6 I would have to go back and refresh my 03:25:53PM</p> <p>7 memory and look at the context in which 03:25:55PM</p> <p>8 this analyst was using that data. That's 03:25:57PM</p> <p>9 number one. 03:26:00PM</p> <p>10 Number two is that for whatever 03:26:01PM</p> <p>11 purpose this analyst is using the data, 03:26:06PM</p> <p>12 one can infer from this anecdote that 03:26:08PM</p> <p>13 analysts systematically ignored 03:26:13PM</p> <p>14 information that was released on February 03:26:15PM</p> <p>15 6th pertaining to the CLASS study. It is 03:26:18PM</p> <p>16 just, I think, again, a ludicrous 03:26:20PM</p> <p>17 inference to draw from this. 03:26:22PM</p> <p>18 Q. Well, not all analysts ignored 03:26:24PM</p> <p>19 it, because one analyst at least published 03:26:26PM</p> <p>20 an analyst report that said "CLASS Flunks 03:26:29PM</p> <p>21 Out" as a result of the analyst's -- or as 03:26:33PM</p> <p>22 a result of the data that was revealed on 03:26:35PM</p> <p>23 the 6th and discussed on the 7th; is that 03:26:36PM</p> <p>24 correct, sir? 03:26:38PM</p> <p>25 MR. WANG: Objection. 03:26:38PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 was put forward in the JAMA article on 03:27:20PM</p> <p>3 September 30th -- or September 13th, 2000, 03:27:22PM</p> <p>4 correct? 03:27:28PM</p> <p>5 MR. WANG: Objection. 03:27:28PM</p> <p>6 A. That's my recollection. 03:27:29PM</p> <p>7 Q. Because when you look at that 03:27:29PM</p> <p>8 JAMA article from September 13th, 2000, 03:27:31PM</p> <p>9 you wouldn't conclude that it flunked out 03:27:33PM</p> <p>10 because it is claiming that Celebrex is 03:27:35PM</p> <p>11 superior to NSAIDs? 03:27:37PM</p> <p>12 MR. WANG: Objection. 03:27:41PM</p> <p>13 Q. Is that correct, sir? 03:27:42PM</p> <p>14 MR. WANG: Objection to form. 03:27:43PM</p> <p>15 A. I would have to go back and 03:27:43PM</p> <p>16 look at the precise language in JAMA. 03:27:45PM</p> <p>17 Q. Okay. Well, let's look at 03:27:45PM</p> <p>18 Exhibit 3. I think you have it there in 03:27:47PM</p> <p>19 your pile. 03:27:49PM</p> <p>20 MR. WANG: Which one is this? 03:27:52PM</p> <p>21 MR. SAHAM: This is Wolfe 03:27:54PM</p> <p>22 Exhibit 3. We looked at it previously. 03:27:55PM</p> <p>23 It is the JAMA article. 03:27:57PM</p> <p>24 Q. And specifically I would refer 03:28:01PM</p> <p>25 you to last three Bates numbers 885, the 03:28:06PM</p>                                                                                     |
| Page 291                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 293                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Are you asking whether it is 03:26:39PM</p> <p>3 correct factually that one analyst wrote 03:26:40PM</p> <p>4 such a report? 03:26:41PM</p> <p>5 Q. Correct. 03:26:42PM</p> <p>6 A. There was a report titled 03:26:43PM</p> <p>7 "CLASS Flunks Out" published on February 03:26:45PM</p> <p>8 8th, correct. 03:26:47PM</p> <p>9 Q. And you understand that the 03:26:49PM</p> <p>10 CLASS it was referring to was the CLASS 03:26:50PM</p> <p>11 study for which the data was revealed by 03:26:51PM</p> <p>12 the FDA for the first time, the full data 03:26:54PM</p> <p>13 was revealed on February 6th, 2001? 03:26:56PM</p> <p>14 A. I'm sorry, can I get the 03:27:00PM</p> <p>15 question again? 03:27:02PM</p> <p>16 Q. The question is, when it is 03:27:02PM</p> <p>17 referring to CLASS and saying it flunked 03:27:03PM</p> <p>18 out, it is referring to the CLASS trial 03:27:05PM</p> <p>19 for which the entire study data was first 03:27:08PM</p> <p>20 made available on February 6th, 2001 on 03:27:10PM</p> <p>21 the FDA website, correct? 03:27:13PM</p> <p>22 MR. WANG: Objection. 03:27:15PM</p> <p>23 A. That is correct. 03:27:15PM</p> <p>24 Q. And it is certainly not 03:27:17PM</p> <p>25 referring to the rendition of CLASS that 03:27:18PM</p>                                                          | <p>1 LEHN - CONFIDENTIAL</p> <p>2 third column, where the journal article 03:28:16PM</p> <p>3 reports "Despite these caveats, however, 03:28:20PM</p> <p>4 our results demonstrate that celecoxib at 03:28:24PM</p> <p>5 a dosage of 2 to 4-fold greater than the 03:28:27PM</p> <p>6 maximum therapeutic dosages and those 03:28:30PM</p> <p>7 approved for labeling for RA and OA is 03:28:33PM</p> <p>8 associated with lower rate of upper GI 03:28:37PM</p> <p>9 toxic effects compared with standard 03:28:43PM</p> <p>10 therapeutic dosages of NSAIDs." 03:28:45PM</p> <p>11 Do you see that? 03:28:47PM</p> <p>12 A. I do. 03:28:47PM</p> <p>13 Q. And the analyst report on 03:28:48PM</p> <p>14 February 8th that says "CLASS Flunks Out" 03:28:49PM</p> <p>15 seems to be inconsistent with the 03:28:53PM</p> <p>16 conclusion here in the JAMA article; is 03:28:54PM</p> <p>17 that correct? 03:28:58PM</p> <p>18 MR. WANG: Objection. 03:28:58PM</p> <p>19 A. Again, I would have to go back 03:28:59PM</p> <p>20 and juxtapose the analyst report with this 03:29:00PM</p> <p>21 to see whether there is a close 03:29:03PM</p> <p>22 correspondence between the two. 03:29:04PM</p> <p>23 Q. But certainly the sentence I 03:29:05PM</p> <p>24 just read to you would not correspond with 03:29:06PM</p> <p>25 the conclusion that CLASS had flunked out, 03:29:08PM</p> |

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| Page 294                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 296                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 would it? 03:29:10PM</p> <p>3 MR. WANG: Objection. 03:29:12PM</p> <p>4 A. Well, this is where, again, I 03:29:13PM</p> <p>5 don't want to parse words. But it was 03:29:14PM</p> <p>6 clear to the market and I believe in the 03:29:17PM</p> <p>7 JAMA article that Celebrex didn't meet the 03:29:20PM</p> <p>8 primary endpoint and a p of 0.09 is not 03:29:24PM</p> <p>9 the 5 percent gold standard that we were 03:29:28PM</p> <p>10 talking about earlier. 03:29:30PM</p> <p>11 So, you know, whether that 03:29:33PM</p> <p>12 constitutes flunking out because you 03:29:35PM</p> <p>13 didn't meet the primary endpoint or 03:29:37PM</p> <p>14 whether flunking out refers to something 03:29:41PM</p> <p>15 more generally is something I would have 03:29:43PM</p> <p>16 to go back and refresh my memory on. 03:29:45PM</p> <p>17 Q. And certainly a reader of the 03:29:47PM</p> <p>18 JAMA article would not be aware that the 03:29:49PM</p> <p>19 entire study data, when you looked at the 03:29:51PM</p> <p>20 entire study period, the p-value was 0.45 03:29:53PM</p> <p>21 not 0.09, correct? 03:30:00PM</p> <p>22 A. That is my recollection, that's 03:30:00PM</p> <p>23 correct. 03:30:01PM</p> <p>24 Q. Let's look back at "CLASS 03:30:02PM</p> <p>25 Flunks Out," which is in this pile 03:30:08PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 would be bad news? And I know you don't 03:31:48PM</p> <p>3 like the word "news," but bad information 03:31:51PM</p> <p>4 for Pharmacia? 03:31:53PM</p> <p>5 A. Again, it would appear to be 03:31:55PM</p> <p>6 not positive, yeah. 03:31:57PM</p> <p>7 Q. And this analyst report is at 03:31:58PM</p> <p>8 least closely associated in time with the 03:32:03PM</p> <p>9 disclosures that occurred on February 6th 03:32:05PM</p> <p>10 and February 7th regarding the CLASS 03:32:07PM</p> <p>11 trial, correct? 03:32:09PM</p> <p>12 A. Correct. 03:32:09PM</p> <p>13 MR. WANG: Objection. 03:32:12PM</p> <p>14 Q. Now, I want to switch gears 03:32:19PM</p> <p>15 slightly. 03:32:23PM</p> <p>16 One of the purposes of the 03:32:25PM</p> <p>17 event study and regression analysis is to 03:32:26PM</p> <p>18 control for market effects; is that 03:32:29PM</p> <p>19 correct? 03:32:31PM</p> <p>20 A. That's correct. 03:32:31PM</p> <p>21 Q. And what does that mean? 03:32:32PM</p> <p>22 A. Well, what it means is that you 03:32:33PM</p> <p>23 can think about three sets of factors that 03:32:38PM</p> <p>24 might affect a company's stock price on a 03:32:42PM</p> <p>25 given day. One would be the movement of 03:32:44PM</p>                                                                          |
| Page 295                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 297                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 somewhere. 03:30:11PM</p> <p>3 And, for the record, when we 03:30:45PM</p> <p>4 are talking about "CLASS Flunks Out," this 03:30:47PM</p> <p>5 is Exhibit 507. That bears Bates numbers 03:30:49PM</p> <p>6 DEFEX 005589 through 597. 03:30:53PM</p> <p>7 And looking at this document, 03:31:11PM</p> <p>8 this is clearly -- it is dated February 03:31:13PM</p> <p>9 8th, 2001, correct? 03:31:16PM</p> <p>10 A. Correct. 03:31:17PM</p> <p>11 Q. So it is not close in time to 03:31:17PM</p> <p>12 the JAMA article, it is close in time to 03:31:19PM</p> <p>13 the disclosures relating to CLASS that 03:31:21PM</p> <p>14 occurred on February 6th and February 7th, 03:31:23PM</p> <p>15 2001; is that correct? 03:31:26PM</p> <p>16 A. That's correct. 03:31:26PM</p> <p>17 Q. And if you look at the third 03:31:27PM</p> <p>18 bullet point of this analyst report, the 03:31:29PM</p> <p>19 CIBC authors, Mara Goldstein, Steven 03:31:31PM</p> <p>20 Gerber and Adam Sohn write "Market share 03:31:38PM</p> <p>21 growth is stable. Concern over slowing 03:31:41PM</p> <p>22 market share is likely to manifest in 03:31:43PM</p> <p>23 share price weakness." Do you see that? 03:31:44PM</p> <p>24 A. I do. 03:31:46PM</p> <p>25 Q. And would you agree that that 03:31:47PM</p>                                   | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the overall market. One would be the 03:32:46PM</p> <p>3 movement of an industry or a peer index. 03:32:49PM</p> <p>4 And third would be information that's 03:32:53PM</p> <p>5 unique to the company itself. 03:32:56PM</p> <p>6 So the inclusion of a market 03:32:59PM</p> <p>7 index is an attempt to control for the 03:33:00PM</p> <p>8 fact that the fortunes of most stocks tend 03:33:02PM</p> <p>9 to rise and fall with the fortunes of the 03:33:06PM</p> <p>10 overall market and to different degrees 03:33:09PM</p> <p>11 and not on every day, but as a general 03:33:12PM</p> <p>12 matter that's true. 03:33:14PM</p> <p>13 Q. Now, is another item that you 03:33:17PM</p> <p>14 control for in your regression analysis an 03:33:21PM</p> <p>15 event study as you control for sector 03:33:23PM</p> <p>16 effects? 03:33:26PM</p> <p>17 A. You can. It depends on the 03:33:27PM</p> <p>18 facts of a particular case and also 03:33:29PM</p> <p>19 depends upon empirically whether there is 03:33:32PM</p> <p>20 a case to be made for that. And in this 03:33:34PM</p> <p>21 case there was. 03:33:36PM</p> <p>22 Q. And what was the purpose of 03:33:37PM</p> <p>23 controlling for sector effects in this 03:33:39PM</p> <p>24 case? 03:33:41PM</p> <p>25 A. Again, similar line of 03:33:41PM</p> |

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| Page 298                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 300                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 reasoning, that the fortunes of an 03:33:43PM</p> <p>3 individual company on a given day, you 03:33:46PM</p> <p>4 know, often will be dependent upon the 03:33:48PM</p> <p>5 fortunes of the industry. So if some 03:33:51PM</p> <p>6 information comes out, it might affect all 03:33:55PM</p> <p>7 firms in the industry, and you want to 03:33:57PM</p> <p>8 attempt to control for that. 03:33:59PM</p> <p>9 Q. And you have a difference in 03:34:00PM</p> <p>10 opinion with Professor Feinstein as to 03:34:01PM</p> <p>11 whether or not you should further control 03:34:04PM</p> <p>12 or further focus the event study by 03:34:08PM</p> <p>13 removing nonpharmaceutical-related 03:34:10PM</p> <p>14 businesses from the regression? 03:34:14PM</p> <p>15 A. Correct. 03:34:16PM</p> <p>16 Q. And why do you think it 03:34:17PM</p> <p>17 wouldn't be helpful to look at just 03:34:18PM</p> <p>18 Pharmacia's pharmaceutical business and 03:34:22PM</p> <p>19 focusing the regression even further? 03:34:24PM</p> <p>20 A. Well, there is several reasons. 03:34:27PM</p> <p>21 The first, and it almost seems to be the 03:34:28PM</p> <p>22 most self-evident, is that the plaintiffs 03:34:32PM</p> <p>23 in this case are alleging that they 03:34:35PM</p> <p>24 suffered losses through their investments 03:34:36PM</p> <p>25 in Pharmacia stock, which means that 03:34:40PM</p>   | <p>1 LEHN - CONFIDENTIAL</p> <p>2 that in the sense that what I did was I 03:35:53PM</p> <p>3 identified peer companies as identified by 03:35:57PM</p> <p>4 analysts that cover Pharmacia, and I kept 03:36:00PM</p> <p>5 replicating my model by adding more 03:36:03PM</p> <p>6 companies based on the frequency with 03:36:05PM</p> <p>7 which analysts cited its peers and kept 03:36:07PM</p> <p>8 adding until the adjusted r-squared 03:36:11PM</p> <p>9 started to go down, which means now if you 03:36:15PM</p> <p>10 add this particular company it detracts 03:36:18PM</p> <p>11 from the explanatory power of the model. 03:36:19PM</p> <p>12 And no agriculture or chemical companies 03:36:21PM</p> <p>13 met that screen. 03:36:25PM</p> <p>14 Furthermore, when you run 03:36:26PM</p> <p>15 Dr. Feinstein's model, not his concocted, 03:36:27PM</p> <p>16 fictitious model, but he runs a second 03:36:31PM</p> <p>17 model where he looks at what he should be 03:36:35PM</p> <p>18 looking at, Pharmacia, the entire entity, 03:36:37PM</p> <p>19 and when you add the chemical index, it is 03:36:39PM</p> <p>20 not significantly associated with the 03:36:42PM</p> <p>21 returns on Pharmacia, and in fact when you 03:36:44PM</p> <p>22 add the chemical index, the adjusted 03:36:47PM</p> <p>23 r-squared goes down a bit, which means 03:36:52PM</p> <p>24 that the data is telling you that it adds 03:36:53PM</p> <p>25 nothing to the explanatory power of the 03:36:55PM</p> |
| Page 299                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 301                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 should be the unit of analysis that one 03:34:44PM</p> <p>3 examines for both materiality and loss 03:34:46PM</p> <p>4 causation. 03:34:49PM</p> <p>5 And what Dr. Feinstein has done 03:34:51PM</p> <p>6 is he has sort of concocted a fictitious 03:34:53PM</p> <p>7 company that doesn't exist, which is 03:34:57PM</p> <p>8 Pharmacia sans its holdings in new 03:35:00PM</p> <p>9 Monsanto, and then he sets off to do his 03:35:05PM</p> <p>10 event study analysis based on this 03:35:08PM</p> <p>11 fiction, which not just as a legal matter, 03:35:10PM</p> <p>12 I'm not a lawyer, but as an economics 03:35:18PM</p> <p>13 matter, if the point of the exercise is to 03:35:20PM</p> <p>14 determine whether information is material 03:35:22PM</p> <p>15 for Pharmacia, the entire entity, and 03:35:23PM</p> <p>16 whether there were losses suffered by 03:35:27PM</p> <p>17 investors in Pharmacia stock, then as a 03:35:29PM</p> <p>18 matter of economics that's what one should 03:35:33PM</p> <p>19 be looking at. 03:35:35PM</p> <p>20 Q. Do you agree that your event 03:35:36PM</p> <p>21 study does not control for potential 03:35:37PM</p> <p>22 information that came into the market on 03:35:40PM</p> <p>23 the relevant days regarding agricultural 03:35:42PM</p> <p>24 or chemical-related businesses? 03:35:44PM</p> <p>25 A. Well, I wouldn't agree with 03:35:46PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 returns in Pharmacia. 03:36:57PM</p> <p>3 So from my point of view what 03:36:59PM</p> <p>4 Dr. Feinstein has done is unscientific, it 03:37:01PM</p> <p>5 is contrived, and with respect to the 03:37:04PM</p> <p>6 chemical index, it adds nothing to the 03:37:06PM</p> <p>7 explanatory power of the returns for 03:37:09PM</p> <p>8 Pharmacia. 03:37:12PM</p> <p>9 Q. You would agree that if the 03:37:12PM</p> <p>10 jury accepted or the court accepted that 03:37:14PM</p> <p>11 the three-day window is the appropriate 03:37:16PM</p> <p>12 window to look at regardless of whether 03:37:18PM</p> <p>13 you excluded the Monsanto portion of the 03:37:20PM</p> <p>14 business, that three-day window is 03:37:23PM</p> <p>15 statistically significant whether Monsanto 03:37:26PM</p> <p>16 is included or not? 03:37:28PM</p> <p>17 MR. WANG: Objection. 03:37:29PM</p> <p>18 A. What I would agree is that 03:37:30PM</p> <p>19 February 8th is statistically significant, 03:37:32PM</p> <p>20 and I think it is misleading to say that 03:37:34PM</p> <p>21 the three-day window was statistically 03:37:38PM</p> <p>22 significant because the first two days 03:37:40PM</p> <p>23 were not. 03:37:42PM</p> <p>24 Q. Well, to break that down, you 03:37:43PM</p> <p>25 would agree that whether Monsanto is in or 03:37:44PM</p>                                                                                                                         |

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| <p style="text-align: right;">Page 302</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 out, February 8th is statistically 03:37:47PM</p> <p>3 significant on either regression analysis? 03:37:49PM</p> <p>4 A. "Either" meaning? 03:37:51PM</p> <p>5 Q. With Monsanto or without 03:37:53PM</p> <p>6 Monsanto. 03:37:55PM</p> <p>7 A. That is correct. 03:37:55PM</p> <p>8 Q. And you would also agree, and 03:37:56PM</p> <p>9 I'm not trying to be Perry Mason here or 03:37:59PM</p> <p>10 anything, I'm just asking you if the court 03:38:04PM</p> <p>11 articulated in a written opinion that the 03:38:06PM</p> <p>12 appropriate window to consider for the 03:38:08PM</p> <p>13 purposes of statistical significance in 03:38:10PM</p> <p>14 determining loss causation was a three-day 03:38:11PM</p> <p>15 window, it wouldn't matter whether 03:38:14PM</p> <p>16 Monsanto was included or excluded, those 03:38:16PM</p> <p>17 three days, the returns, the cumulative 03:38:19PM</p> <p>18 returns over those three days was 03:38:21PM</p> <p>19 statistically significant whether Monsanto 03:38:24PM</p> <p>20 is included or excluded; is that correct, 03:38:26PM</p> <p>21 sir? 03:38:30PM</p> <p>22 MR. WANG: Objection. 03:38:31PM</p> <p>23 A. Using Dr. Feinstein's two 03:38:32PM</p> <p>24 models or -- 03:38:33PM</p> <p>25 Q. Well, let's look at his two 03:38:36PM</p> | <p style="text-align: right;">Page 304</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Significance of Dr. Feinstein's Cumulative 03:39:35PM</p> <p>3 Residual Price Declines Following the 03:39:37PM</p> <p>4 Release of FDA Briefing Documents on 03:39:39PM</p> <p>5 February 6th, 2001, if you look at the 03:39:40PM</p> <p>6 three days, you have that dashed line of 03:39:45PM</p> <p>7 being where statistical significance would 03:39:48PM</p> <p>8 need to be? 03:39:49PM</p> <p>9 A. Correct. 03:39:50PM</p> <p>10 Q. And it well exceeds that when 03:39:50PM</p> <p>11 you look at the three days? 03:39:52PM</p> <p>12 A. That is correct. 03:39:53PM</p> <p>13 Q. And would that refresh your 03:39:53PM</p> <p>14 recollection, since the r-squared, when 03:39:54PM</p> <p>15 you put the chemical companies in there, 03:39:57PM</p> <p>16 didn't do much, that it is statistically 03:39:59PM</p> <p>17 significant either way, whether you 03:40:01PM</p> <p>18 include Monsanto or exclude Monsanto under 03:40:03PM</p> <p>19 Dr. Feinstein's analysis? 03:40:06PM</p> <p>20 A. Again, I would have to see the 03:40:07PM</p> <p>21 underlying calculations, but I believe 03:40:09PM</p> <p>22 that's correct. 03:40:10PM</p> <p>23 Q. And it is interesting, here in 03:40:10PM</p> <p>24 Exhibit 3 you say the title of your 03:40:12PM</p> <p>25 exhibit is Statistical Significance of 03:40:15PM</p> |
| <p style="text-align: right;">Page 303</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 models. They would be statistically 03:38:38PM</p> <p>3 significant whether Monsanto is included 03:38:39PM</p> <p>4 or excluded, correct? 03:38:41PM</p> <p>5 MR. WANG: Objection. 03:38:42PM</p> <p>6 A. I'm just hesitating because I 03:38:43PM</p> <p>7 forget the precise finding on that with 03:38:46PM</p> <p>8 respect to the second regression model, 03:38:48PM</p> <p>9 but I believe that's the case. 03:38:50PM</p> <p>10 Q. And you have an exhibit in your 03:38:51PM</p> <p>11 rebuttal report where -- I might as well 03:38:52PM</p> <p>12 mark this as Exhibit 516. 03:38:55PM</p> <p>13 (Plaintiffs' Exhibit 516 marked 03:38:57PM</p> <p>14 for identification.) 03:38:59PM</p> <p>15 Q. Could you please take a look at 03:39:10PM</p> <p>16 516. That appears to be your rebuttal 03:39:11PM</p> <p>17 report; is that correct? 03:39:14PM</p> <p>18 A. Without checking every page, it 03:39:15PM</p> <p>19 appears to be. 03:39:19PM</p> <p>20 Q. And it has your signature there 03:39:20PM</p> <p>21 somewhere? Let's be precise. On page 25, 03:39:22PM</p> <p>22 does that appear to be your signature? 03:39:27PM</p> <p>23 A. It is, yes. 03:39:28PM</p> <p>24 Q. And if we look at Exhibit 3 of 03:39:29PM</p> <p>25 your rebuttal report, Statistical 03:39:31PM</p>        | <p style="text-align: right;">Page 305</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Dr. Feinstein's Cumulative Residual Price 03:40:17PM</p> <p>3 Declines Following the Release of FDA 03:40:21PM</p> <p>4 Briefing Documents on February 6th, 2001. 03:40:23PM</p> <p>5 How come you didn't include the 03:40:27PM</p> <p>6 company briefing document in the title of 03:40:28PM</p> <p>7 Exhibit 3? 03:40:30PM</p> <p>8 MR. WANG: Objection to form. 03:40:31PM</p> <p>9 A. Well, the alleged corrective 03:40:32PM</p> <p>10 disclosures were contained in the FDA 03:40:35PM</p> <p>11 briefing documents. 03:40:38PM</p> <p>12 Q. But the FDA briefing documents 03:40:38PM</p> <p>13 were simultaneously posted in the same 03:40:40PM</p> <p>14 posting with the company briefing 03:40:43PM</p> <p>15 document, correct? 03:40:45PM</p> <p>16 A. Correct. 03:40:45PM</p> <p>17 Q. Is it possible that you didn't 03:40:46PM</p> <p>18 consider the company briefing document 03:40:47PM</p> <p>19 prior to signing your rebuttal report on 03:40:49PM</p> <p>20 July 15th of 2011? 03:40:53PM</p> <p>21 A. Consider in what way, sir? 03:40:56PM</p> <p>22 Q. Well, did you read it before 03:40:57PM</p> <p>23 then? 03:40:59PM</p> <p>24 A. I believe so, yes. But it's 03:41:02PM</p> <p>25 not relevant, frankly, for the analysis 03:41:06PM</p>                                                                   |

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| Page 306                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 308                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 that I've done. 03:41:08PM</p> <p>3 Q. So your opinion today is that 03:41:08PM</p> <p>4 the briefing document has no impact on 03:41:12PM</p> <p>5 your analysis of loss causation or 03:41:14PM</p> <p>6 materiality? 03:41:16PM</p> <p>7 A. The company briefing document? 03:41:17PM</p> <p>8 Q. The company briefing document. 03:41:18PM</p> <p>9 A. That's correct. 03:41:20PM</p> <p>10 Q. And it is similarly your 03:41:20PM</p> <p>11 opinion that you think that Hassan's 03:41:21PM</p> <p>12 presentation on February 6th also has no 03:41:26PM</p> <p>13 impact on your opinion regarding loss 03:41:28PM</p> <p>14 causation and materiality? 03:41:29PM</p> <p>15 A. That is correct. 03:41:30PM</p> <p>16 Q. And same with the fact that 03:41:31PM</p> <p>17 JAMA peer-reviewed journal had published 03:41:33PM</p> <p>18 the six-month study in a peer-reviewed 03:41:38PM</p> <p>19 form after peer review in September 13th, 03:41:42PM</p> <p>20 2000, that again also does not impact your 03:41:47PM</p> <p>21 loss causation analysis and materiality 03:41:51PM</p> <p>22 analysis? 03:41:54PM</p> <p>23 A. That's correct. 03:41:55PM</p> <p>24 Q. And what did you do, what were 03:41:55PM</p> <p>25 your methods to rule out that those three 03:41:57PM</p>                                                           | <p>1 LEHN - CONFIDENTIAL</p> <p>2 here. 03:43:00PM</p> <p>3 Q. There is no peer-reviewed 03:43:00PM</p> <p>4 literature that supports that opinion? 03:43:02PM</p> <p>5 MR. WANG: Objection. 03:43:04PM</p> <p>6 A. Well, there is plenty of 03:43:05PM</p> <p>7 peer-reviewed literature that talks about 03:43:07PM</p> <p>8 how if the market for a security is 03:43:09PM</p> <p>9 efficient, repeating information that had 03:43:11PM</p> <p>10 been previously disclosed, is not expected 03:43:13PM</p> <p>11 to affect the company's stock price. So 03:43:15PM</p> <p>12 in a general sense, there is peer-reviewed 03:43:19PM</p> <p>13 literature to support that. 03:43:22PM</p> <p>14 Q. Let's focus on Exhibit 70, the 03:43:23PM</p> <p>15 briefing document. That didn't 03:43:25PM</p> <p>16 communicate old information, but 03:43:27PM</p> <p>17 communicated new information, the 03:43:28PM</p> <p>18 informative censoring, depletion of 03:43:31PM</p> <p>19 susceptibles hypothesis. 03:43:33PM</p> <p>20 Is there any peer-reviewed 03:43:35PM</p> <p>21 literature that supports your opinion that 03:43:37PM</p> <p>22 that shouldn't be considered as part of 03:43:38PM</p> <p>23 the loss causation and materiality 03:43:40PM</p> <p>24 analysis? 03:43:41PM</p> <p>25 MR. WANG: Objection. 03:43:42PM</p>                                                                           |
| Page 307                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 309                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 documents had no impact on the way the 03:42:00PM</p> <p>3 stock moved or the causation and 03:42:03PM</p> <p>4 materiality of the revelations occurring 03:42:06PM</p> <p>5 on February 6th, what did you do to rule 03:42:08PM</p> <p>6 those documents out as being important? 03:42:11PM</p> <p>7 A. Well, in terms of Dr. Hassan's 03:42:13PM</p> <p>8 comments, my recollection is there was no 03:42:20PM</p> <p>9 new information disclosed in his 03:42:22PM</p> <p>10 presentation as it pertains to the issues 03:42:25PM</p> <p>11 in hand here. 03:42:27PM</p> <p>12 With respect to the JAMA 03:42:29PM</p> <p>13 article, that had been published in 03:42:31PM</p> <p>14 September. So there is no new information 03:42:33PM</p> <p>15 regarding JAMA. 03:42:35PM</p> <p>16 And with respect to the company 03:42:37PM</p> <p>17 briefing materials, I have no basis to 03:42:39PM</p> <p>18 believe that anything in there would have 03:42:41PM</p> <p>19 been relevant for the loss causation 03:42:45PM</p> <p>20 analysis. 03:42:47PM</p> <p>21 Q. Are there any other bases for 03:42:48PM</p> <p>22 your opinion that those three documents 03:42:49PM</p> <p>23 are not relevant to your consideration? 03:42:52PM</p> <p>24 MR. WANG: Objection to form. 03:42:55PM</p> <p>25 A. I can't think of any as I sit 03:42:56PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Well, the peer-reviewed 03:43:43PM</p> <p>3 literature doesn't get as specific as a 03:43:45PM</p> <p>4 particular document in a particular case. 03:43:47PM</p> <p>5 But in my opinion there is no scientific 03:43:49PM</p> <p>6 basis to believe that that would be 03:43:52PM</p> <p>7 relevant for determining whether or not 03:43:54PM</p> <p>8 there was loss causation on the day that 03:43:57PM</p> <p>9 the alleged corrective disclosures were 03:44:00PM</p> <p>10 made. 03:44:02PM</p> <p>11 Q. But you can't point to a 03:44:02PM</p> <p>12 particular journal article or piece of 03:44:04PM</p> <p>13 peer-reviewed literature that supports 03:44:06PM</p> <p>14 your opinion in that regard? 03:44:07PM</p> <p>15 A. Well, I wouldn't expect that 03:44:08PM</p> <p>16 there would be a peer-reviewed article 03:44:10PM</p> <p>17 that would be so specific that would say 03:44:12PM</p> <p>18 the company briefing document would be 03:44:15PM</p> <p>19 immaterial on this date. 03:44:18PM</p> <p>20 Q. But what about confounding 03:44:20PM</p> <p>21 information, information that says the 03:44:22PM</p> <p>22 opposite of what the disclosure says? 03:44:24PM</p> <p>23 A. That happens frequently in the 03:44:26PM</p> <p>24 markets. The very events that we were 03:44:29PM</p> <p>25 talking about earlier, like earnings 03:44:32PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 announcements that Patell and Wolfson look 03:44:33PM</p> <p>3 at very frequently when companies report 03:44:36PM</p> <p>4 disappointing earnings, the earnings 03:44:40PM</p> <p>5 numbers are going down less than what the 03:44:42PM</p> <p>6 market expected, and yet very often 03:44:45PM</p> <p>7 management puts a very positive face on 03:44:47PM</p> <p>8 the earnings. And they try to take the 03:44:49PM</p> <p>9 bad news and present it as best they can. 03:44:51PM</p> <p>10 The market is able to 03:44:56PM</p> <p>11 discriminate, especially in an efficient 03:44:57PM</p> <p>12 market, that is the essence of an 03:45:00PM</p> <p>13 efficient market, it can cut through and 03:45:02PM</p> <p>14 cut to the chase and process the 03:45:04PM</p> <p>15 information and process it efficiently. 03:45:05PM</p> <p>16 And the same with corporate 03:45:08PM</p> <p>17 takeovers, you know, companies make an 03:45:09PM</p> <p>18 announcement of a bid, the stock price 03:45:12PM</p> <p>19 goes down, the market doesn't like the 03:45:15PM</p> <p>20 acquisition, and management comes out and 03:45:17PM</p> <p>21 says you know, there are great synergies 03:45:19PM</p> <p>22 here. 03:45:22PM</p> <p>23 The paper that you pointed me 03:45:22PM</p> <p>24 to before with Zhao in the Journal of 03:45:23PM</p> <p>25 Finance we used as an anecdote to AOL Time 03:45:26PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. No. 03:46:26PM</p> <p>3 Q. So you are not offering an 03:46:26PM</p> <p>4 opinion either way what had caused that 03:46:28PM</p> <p>5 increase? 03:46:31PM</p> <p>6 A. Well, again, I know one thing 03:46:31PM</p> <p>7 that didn't cause it, and that was the 03:46:34PM</p> <p>8 press release on April 17th. I'm 03:46:36PM</p> <p>9 confident of that based, again, on the 03:46:39PM</p> <p>10 fact that the assumption is that the 03:46:41PM</p> <p>11 market for the security is efficient, and 03:46:44PM</p> <p>12 the information in the April 17th press 03:46:46PM</p> <p>13 release would therefore be fully reflected 03:46:48PM</p> <p>14 in Pharmacia's stock price by the close of 03:46:53PM</p> <p>15 trading on the 17th. 03:46:55PM</p> <p>16 Q. Could you take a look at 03:46:56PM</p> <p>17 Exhibit 4, again, of your report, the 03:46:58PM</p> <p>18 first page of Exhibit 4. 03:47:00PM</p> <p>19 Q. You would agree with me that 03:47:25PM</p> <p>20 the return on April 19th of 13.87 percent 03:47:27PM</p> <p>21 is statistically significant? 03:47:31PM</p> <p>22 A. Highly significant. 03:47:37PM</p> <p>23 Q. And it was not the result of 03:47:38PM</p> <p>24 random volatility? 03:47:39PM</p> <p>25 A. Well, again, one can never say 03:47:40PM</p>                                                                                                                                                                         |
| Page 311                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 313                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Warner, that when AOL bought Time Warner, 03:45:30PM</p> <p>3 the stock price went down, Steve Case 03:45:31PM</p> <p>4 talked about how great the synergies were 03:45:33PM</p> <p>5 in the acquisition, and yet the market was 03:45:35PM</p> <p>6 able to properly assess the information, 03:45:39PM</p> <p>7 cut through what you are calling 03:45:41PM</p> <p>8 confounding information. 03:45:44PM</p> <p>9 And it is not confounding 03:45:44PM</p> <p>10 information in the sense that we have been 03:45:46PM</p> <p>11 talking about it on February 7th and 8th. 03:45:48PM</p> <p>12 What you are talking about is maybe sort 03:45:51PM</p> <p>13 of additional color on the information 03:45:53PM</p> <p>14 that was released. But the essence of an 03:45:54PM</p> <p>15 efficient market is that it is able to 03:45:57PM</p> <p>16 pierce through that. 03:46:01PM</p> <p>17 Q. And what paper are you 03:46:01PM</p> <p>18 referring to? Are you referring to the 03:46:03PM</p> <p>19 paper that you co-authored with Zhao, 03:46:07PM</p> <p>20 Exhibit 511? 03:46:10PM</p> <p>21 A. Correct. 03:46:11PM</p> <p>22 Q. Now, are you offering an 03:46:17PM</p> <p>23 opinion as to what caused the stock price 03:46:18PM</p> <p>24 increase that occurred on April 19th, 03:46:21PM</p> <p>25 2000? 03:46:24PM</p>                                                                               | <p>1 LEHN - CONFIDENTIAL</p> <p>2 definitively it was not, but you can be 03:47:42PM</p> <p>3 confident, highly confident, that it was 03:47:45PM</p> <p>4 not likely to be a random event. 03:47:48PM</p> <p>5 But having said that, the whole 03:47:51PM</p> <p>6 essence of a statistical test acknowledge 03:47:53PM</p> <p>7 that things do happen randomly. So if you 03:47:58PM</p> <p>8 have a 5 percent significance level, that 03:48:00PM</p> <p>9 means that five times in a hundred you are 03:48:04PM</p> <p>10 going to observe an unusual price movement 03:48:08PM</p> <p>11 that just occurs randomly. So it is not 03:48:11PM</p> <p>12 as if weird stuff doesn't occasionally 03:48:14PM</p> <p>13 happen even if efficient markets, it is 03:48:17PM</p> <p>14 the whole essence of statistical testing. 03:48:19PM</p> <p>15 Q. But this one does meet the gold 03:48:22PM</p> <p>16 standard of the 0.05 statistical 03:48:24PM</p> <p>17 significance, the 13.87 increase on April 03:48:26PM</p> <p>18 19th, 2000? 03:48:29PM</p> <p>19 A. Well, it does. But that's my 03:48:30PM</p> <p>20 point, is that when the gold standard is 03:48:31PM</p> <p>21 based on a level of significance, so let's 03:48:34PM</p> <p>22 say the 95 percent confidence level, which 03:48:36PM</p> <p>23 means that if you observe a price movement 03:48:39PM</p> <p>24 of a given magnitude in t-statistic with a 03:48:39PM</p> <p>25 certain level, there's only a five in 100 03:48:43PM</p> |

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| Page 314                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 316                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 chance that what you are observing is 03:48:46PM</p> <p>3 random. 03:48:48PM</p> <p>4 One exercise in the past that I 03:48:49PM</p> <p>5 have had students do is take any company, 03:48:51PM</p> <p>6 Walt Disney, General Electric, take any 03:48:53PM</p> <p>7 company and do the event study over a long 03:48:56PM</p> <p>8 enough window, you are going to find over 03:48:58PM</p> <p>9 a period of maybe 100 days five days in 03:49:01PM</p> <p>10 which the stock price is going to move 03:49:03PM</p> <p>11 significantly statistically and there is 03:49:06PM</p> <p>12 no information. That's the whole essence 03:49:08PM</p> <p>13 of a random movement. 03:49:10PM</p> <p>14 But those days are rare, and 03:49:11PM</p> <p>15 most of the time when you see a movement 03:49:13PM</p> <p>16 of this magnitude there is an information 03:49:15PM</p> <p>17 release you can tie it to. But stuff does 03:49:19PM</p> <p>18 happen that often results in price 03:49:22PM</p> <p>19 movements without information. 03:49:24PM</p> <p>20 Q. And you just need a 1.96 03:49:25PM</p> <p>21 t-statistic to get statistical 03:49:28PM</p> <p>22 significance at the 0.05 threshold? 03:49:30PM</p> <p>23 A. In a two-tail test, correct 03:49:34PM</p> <p>24 Q. And here you have a 7.15 on a 03:49:34PM</p> <p>25 two-tailed? 03:49:36PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 not due to random volatility, correct? 03:50:22PM</p> <p>3 A. Correct. 03:50:24PM</p> <p>4 Q. You can't rule it out, but you 03:50:24PM</p> <p>5 have come pretty close? 03:50:26PM</p> <p>6 A. You can't rule it out, though. 03:50:27PM</p> <p>7 Q. And did you do -- as part of 03:50:30PM</p> <p>8 your event study, did you look at the 03:50:32PM</p> <p>9 information that came in in the market, 03:50:34PM</p> <p>10 say, between April 17th and April 19th? 03:50:36PM</p> <p>11 A. I had the information and I 03:50:41PM</p> <p>12 probably skimmed it, but not with an eye 03:50:45PM</p> <p>13 towards trying to explain the return on 03:50:47PM</p> <p>14 April 19th, which would be irrelevant, 03:50:48PM</p> <p>15 again, for my opinion on materiality and 03:50:51PM</p> <p>16 loss causation. 03:50:55PM</p> <p>17 Q. Did you look at how the 03:50:55PM</p> <p>18 market -- what the market's view or what 03:50:58PM</p> <p>19 they were anticipating with respect to the 03:51:00PM</p> <p>20 CLASS release prior to April 15th? 03:51:02PM</p> <p>21 A. Not systematically. Again, I 03:51:05PM</p> <p>22 reviewed articles, but not particularly 03:51:13PM</p> <p>23 with an eye towards that issue. 03:51:17PM</p> <p>24 Q. And did it appear, you know, 03:51:19PM</p> <p>25 from your look at that information that 03:51:21PM</p> |
| Page 315                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 317                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Correct. 03:49:37PM</p> <p>3 Q. So this is probably like 99 03:49:37PM</p> <p>4 percent, right, it is like a 1 percent 03:49:39PM</p> <p>5 statistical significance? 03:49:43PM</p> <p>6 A. Even more, 99 plus. 03:49:44PM</p> <p>7 Q. Give me the ballpark. Help me 03:49:45PM</p> <p>8 a little bit. 99.5, 99.3? 03:49:47PM</p> <p>9 A. It would be 0.99, probably a 03:49:50PM</p> <p>10 few nines there. 03:49:53PM</p> <p>11 Q. So here you could conclude that 03:49:54PM</p> <p>12 there is like a 99 point something chance 03:49:55PM</p> <p>13 that this was not due to random 03:49:58PM</p> <p>14 volatility, correct? 03:50:01PM</p> <p>15 A. You could. But that always 03:50:01PM</p> <p>16 allows that there is still some 03:50:03PM</p> <p>17 probability, and if you have a large 03:50:05PM</p> <p>18 enough sample you are going to have -- 03:50:07PM</p> <p>19 every now and then you are going to have a 03:50:10PM</p> <p>20 day like that. 03:50:12PM</p> <p>21 Q. But here it is like if you 03:50:12PM</p> <p>22 looked at 100 days, there would be like -- 03:50:12PM</p> <p>23 strike that. 03:50:12PM</p> <p>24 You would testify that there is 03:50:15PM</p> <p>25 a 99.5 degree of certainty that this was 03:50:17PM</p>                                                                                                | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the market was anticipating positive CLASS 03:51:23PM</p> <p>3 results to be released in the April time 03:51:25PM</p> <p>4 frame? 03:51:27PM</p> <p>5 A. It is my general impression. I 03:51:27PM</p> <p>6 don't recall whether I got it from 03:51:31PM</p> <p>7 reviewing those articles or whether it is 03:51:32PM</p> <p>8 something that I learned later when 03:51:33PM</p> <p>9 reading analyst reports. 03:51:35PM</p> <p>10 Q. But from your review of those 03:51:36PM</p> <p>11 analyst reports there was some expectation 03:51:38PM</p> <p>12 built into the market that the CLASS data 03:51:40PM</p> <p>13 was going to be favorable? 03:51:42PM</p> <p>14 A. I recall there were some 03:51:43PM</p> <p>15 excerpts in analyst reports to that 03:51:45PM</p> <p>16 effect. 03:51:47PM</p> <p>17 Q. And I want to show you what I'm 03:51:48PM</p> <p>18 marking as Plaintiffs' Exhibit 517. 03:51:51PM</p> <p>19 (Plaintiffs' Exhibit 517 marked 03:51:54PM</p> <p>20 for identification.) 03:51:57PM</p> <p>21 Q. Could you take a look at that 03:51:57PM</p> <p>22 document, please. 03:52:17PM</p> <p>23 And, for the record, 03:52:18PM</p> <p>24 Plaintiffs' Exhibit 517 is a Morgan 03:52:19PM</p> <p>25 Stanley Dean Witter analyst report 03:52:22PM</p>                                                                             |

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| <p style="text-align: right;">Page 318</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 regarding Pharmacia dated April 18th, 03:52:25PM</p> <p>3 2000, and it is entitled "Positive Results 03:52:28PM</p> <p>4 of Celebrex CLASS Trial Released," and it 03:52:30PM</p> <p>5 bears Bates numbers DEFEX 006443 through 03:52:34PM</p> <p>6 46. 03:52:41PM</p> <p>7 And is this one of the analyst 03:52:43PM</p> <p>8 reports you perused in looking at -- you 03:52:44PM</p> <p>9 know, what -- strike that. 03:52:47PM</p> <p>10 Is this one of the analyst 03:52:50PM</p> <p>11 reports you looked at in preparing your 03:52:52PM</p> <p>12 initial report in this case? 03:52:54PM</p> <p>13 A. It is. 03:52:54PM</p> <p>14 Q. And this analyst report is 03:52:55PM</p> <p>15 dated April 18th, 2000; is that correct? 03:52:58PM</p> <p>16 A. That's correct. 03:53:01PM</p> <p>17 Q. And that's one day after the 03:53:01PM</p> <p>18 April 17th press release that plaintiffs 03:53:03PM</p> <p>19 alleged to be false and misleading; is 03:53:05PM</p> <p>20 that correct? 03:53:08PM</p> <p>21 A. That's correct. 03:53:08PM</p> <p>22 Q. And the title, in pretty large 03:53:09PM</p> <p>23 type, says "Positive Results of Celebrex 03:53:11PM</p> <p>24 CLASS Trial Released"; is that correct? 03:53:13PM</p> <p>25 A. That's correct. 03:53:15PM</p> | <p style="text-align: right;">Page 320</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 bottom talking about incidence of ulcer 03:54:11PM</p> <p>3 complications in symptomatic ulcers; do 03:54:15PM</p> <p>4 you see that? 03:54:18PM</p> <p>5 A. I do. 03:54:18PM</p> <p>6 Q. And it reports a p-value of 03:54:19PM</p> <p>7 0.03? 03:54:21PM</p> <p>8 A. Correct. 03:54:21PM</p> <p>9 Q. And if you go to the next page, 03:54:21PM</p> <p>10 there is a box that says incidence of 03:54:23PM</p> <p>11 ulcer complications, and it is for 03:54:25PM</p> <p>12 patients not taking aspirin. Do you see 03:54:29PM</p> <p>13 that up at the top? You have to read the 03:54:31PM</p> <p>14 text. 03:54:33PM</p> <p>15 It says "When a subset analysis 03:54:34PM</p> <p>16 is conducted to approve the patients 03:54:36PM</p> <p>17 taking aspirin, Celebrex showed 03:54:38PM</p> <p>18 statistically significant superiority over 03:54:39PM</p> <p>19 NSAIDs on both endpoints." 03:54:39PM</p> <p>20 Do you see that? 03:54:43PM</p> <p>21 A. I do. 03:54:43PM</p> <p>22 Q. And it reports a p-value of 03:54:44PM</p> <p>23 0.037. Do you see that? 03:54:46PM</p> <p>24 A. I do. 03:54:46PM</p> <p>25 Q. And do you know whether that 03:54:48PM</p>                                                                                                                                                                 |
| <p style="text-align: right;">Page 319</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And this document goes on, on 03:53:15PM</p> <p>3 the second page, again titled "Positive 03:53:19PM</p> <p>4 Results of Celebrex CLASS Trial Released," 03:53:22PM</p> <p>5 it goes on to break down some of the 03:53:24PM</p> <p>6 findings of the CLASS trial; is that 03:53:26PM</p> <p>7 correct? 03:53:31PM</p> <p>8 A. It appears to, yes. 03:53:31PM</p> <p>9 Q. And it trumpets the p-value, 03:53:32PM</p> <p>10 and I know you are not going to like the 03:53:35PM</p> <p>11 word "trumpets," so I will ask the 03:53:36PM</p> <p>12 question again. 03:53:39PM</p> <p>13 It reiterates the p-value of 03:53:40PM</p> <p>14 0.09 for ulcer complications in the table 03:53:44PM</p> <p>15 on the right-hand side? 03:53:46PM</p> <p>16 A. Correct, which is not 03:53:47PM</p> <p>17 statistically significant. 03:53:48PM</p> <p>18 Q. But is certainly a much 03:53:50PM</p> <p>19 superior p-value than the 0.45 that was 03:53:54PM</p> <p>20 revealed for the entire study data, 03:53:59PM</p> <p>21 correct, on February 6th, 2001? 03:54:00PM</p> <p>22 MR. WANG: Objection. 03:54:02PM</p> <p>23 A. It is a higher level of 03:54:03PM</p> <p>24 significance, that's correct. 03:54:05PM</p> <p>25 Q. And also there's a box at the 03:54:06PM</p>    | <p style="text-align: right;">Page 321</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 p-value held when you went and looked at 03:54:50PM</p> <p>3 the entire study results, or that finding 03:54:53PM</p> <p>4 of statistical significance held when you 03:54:55PM</p> <p>5 looked at the entire study results? 03:54:59PM</p> <p>6 A. I think it did not hold. For 03:55:00PM</p> <p>7 the entire study results, I think the 03:55:05PM</p> <p>8 p-value increases. 03:55:07PM</p> <p>9 Q. And it is approximately 0.185 03:55:08PM</p> <p>10 when you look at the statistical 03:55:11PM</p> <p>11 reviewer's report? 03:55:13PM</p> <p>12 MR. WANG: Objection. 03:55:13PM</p> <p>13 A. I haven't committed that to 03:55:14PM</p> <p>14 memory, but that is easily verified by 03:55:15PM</p> <p>15 looking at the report. 03:55:18PM</p> <p>16 Q. And this information regarding 03:55:19PM</p> <p>17 the CLASS trial is information in addition 03:55:23PM</p> <p>18 to what was found in the April 17th press 03:55:26PM</p> <p>19 release that plaintiffs allege is false 03:55:29PM</p> <p>20 and misleading in this case; is that 03:55:32PM</p> <p>21 correct? 03:55:36PM</p> <p>22 A. Can you repeat the question? 03:55:36PM</p> <p>23 Q. Well, there is information in 03:55:37PM</p> <p>24 this analyst report detail that is not 03:55:38PM</p> <p>25 found in the April 17th press release; is 03:55:42PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 that correct? Have you compared the two? 03:55:46PM</p> <p>3 A. I haven't stacked them up 03:55:47PM</p> <p>4 against each other. But I don't recall, 03:55:49PM</p> <p>5 for example, seeing the numbers in the 03:55:52PM</p> <p>6 boxes in the press release, so that would 03:55:55PM</p> <p>7 be one difference, one level of detail 03:55:59PM</p> <p>8 that -- unless it was presented in a 03:56:01PM</p> <p>9 narrative form in the press release. 03:56:05PM</p> <p>10 Q. Now, can you look back at 03:56:14PM</p> <p>11 Exhibit 503, the Patell and Wolfson 03:56:23PM</p> <p>12 article, specifically page 235. 03:56:26PM</p> <p>13 And in the first full paragraph 03:56:42PM</p> <p>14 in the middle of page 235, Patell and 03:56:43PM</p> <p>15 Wolfson write "The evening following the 03:56:46PM</p> <p>16 announcement provides an opportunity for 03:56:50PM</p> <p>17 news to be disseminated to investors who 03:56:51PM</p> <p>18 are unable to execute intraday trading 03:56:54PM</p> <p>19 strategies, and their actions may affect 03:56:57PM</p> <p>20 the overnight price change and the opening 03:56:59PM</p> <p>21 trades on the next day." 03:57:03PM</p> <p>22 Do you see that? 03:57:05PM</p> <p>23 A. I do. 03:57:05PM</p> <p>24 Q. Is it possible -- strike that. 03:57:05PM</p> <p>25 Have you done anything to rule 03:57:07PM</p>                               | <p>1 LEHN - CONFIDENTIAL</p> <p>2 occurred on April 17th. 03:58:10PM</p> <p>3 Q. And you have no alternative 03:58:11PM</p> <p>4 explanation as to what caused the 03:58:13PM</p> <p>5 statistically significant price increase 03:58:15PM</p> <p>6 on April 19th though, correct? 03:58:16PM</p> <p>7 A. I don't. But, again, I think, 03:58:18PM</p> <p>8 keep in mind, one is it is not relevant 03:58:21PM</p> <p>9 from my point of view as to materiality 03:58:24PM</p> <p>10 and loss causation. Second is that if you 03:58:27PM</p> <p>11 just inspect the data, what you observe is 03:58:30PM</p> <p>12 that there's a statistically significant 03:58:33PM</p> <p>13 increase on April 19th and then a large 03:58:35PM</p> <p>14 statistically significant decrease on 03:58:40PM</p> <p>15 April 25th of minus 8.05 percent, which 03:58:43PM</p> <p>16 has a t-statistics of minus 4.11. 03:58:49PM</p> <p>17 And my recollection is that was 03:58:55PM</p> <p>18 the day that Pharmacia issued an earnings 03:58:56PM</p> <p>19 report, and the earnings were 03:58:58PM</p> <p>20 disappointing, and the market took 8.05 03:59:01PM</p> <p>21 percent of value away on a residual basis. 03:59:06PM</p> <p>22 And the reason I mention that 03:59:09PM</p> <p>23 is it is not unusual, and I haven't done a 03:59:10PM</p> <p>24 study of it in this case, but it is not 03:59:13PM</p> <p>25 unusual prior to an earnings announcement 03:59:15PM</p> |
| Page 323                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 325                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 out that investor reaction on April 19th 03:57:08PM</p> <p>3 to having read this analyst report, this 03:57:11PM</p> <p>4 Morgan Stanley analyst report on April 03:57:13PM</p> <p>5 18th, is not what caused the statistically 03:57:16PM</p> <p>6 significant stock increase on April 19th? 03:57:20PM</p> <p>7 A. I have not, and, again, it 03:57:23PM</p> <p>8 would not be relevant for my opinion. 03:57:25PM</p> <p>9 Q. Well, if you did do an analysis 03:57:28PM</p> <p>10 that revealed that the reaction on April 03:57:31PM</p> <p>11 19th was a result of this article, how 03:57:34PM</p> <p>12 would that impact your opinions? 03:57:36PM</p> <p>13 MR. WANG: Objection to form. 03:57:40PM</p> <p>14 A. It wouldn't impact it at all, 03:57:41PM</p> <p>15 because the alleged misrepresentation 03:57:44PM</p> <p>16 occurred on April 17th, and on the 03:57:45PM</p> <p>17 presumption that the market for Pharmacia 03:57:49PM</p> <p>18 stock was efficient, that information 03:57:51PM</p> <p>19 would have been fully reflected in 03:57:54PM</p> <p>20 Pharmacia's stock price by the close on 03:57:56PM</p> <p>21 April 17th. 03:57:58PM</p> <p>22 And if an analyst issued a 03:58:00PM</p> <p>23 report, well, that is additional 03:58:02PM</p> <p>24 information, but it is separate from the 03:58:04PM</p> <p>25 alleged misrepresentation that it had 03:58:07PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 for there to be speculation about the 03:59:18PM</p> <p>3 earnings being, you know, better than had 03:59:20PM</p> <p>4 been expected or worse than had been 03:59:22PM</p> <p>5 expected. 03:59:25PM</p> <p>6 And when you see a pattern like 03:59:25PM</p> <p>7 this of 13.87 percent days before the 03:59:28PM</p> <p>8 earnings announcement and then a major 03:59:30PM</p> <p>9 decline when the earnings came out, it 03:59:32PM</p> <p>10 certainly is consistent with expectations 03:59:34PM</p> <p>11 that earnings were going to be better than 03:59:37PM</p> <p>12 what they actually reported on April 25th. 03:59:38PM</p> <p>13 So there could be other 03:59:42PM</p> <p>14 reasons, but it is not my objective to 03:59:45PM</p> <p>15 determine what the reason was. 03:59:47PM</p> <p>16 Q. But the earnings announcement 03:59:48PM</p> <p>17 was on April 25th, not April 18th, 03:59:49PM</p> <p>18 correct? 03:59:53PM</p> <p>19 A. Correct. But it is not unusual 03:59:53PM</p> <p>20 for major corporate events, whether it be 03:59:55PM</p> <p>21 earnings announcements or takeover 03:59:57PM</p> <p>22 announcements, for speculation to start in 03:59:59PM</p> <p>23 the market prior to the actual 04:00:02PM</p> <p>24 announcement, rumors spreading that things 04:00:03PM</p> <p>25 are better than we thought and the market 04:00:05PM</p>                                                   |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 might then -- you often find that the 04:00:08PM</p> <p>3 market is more volatile for a stock prior 04:00:11PM</p> <p>4 to a major announcement because there is 04:00:14PM</p> <p>5 such speculation. 04:00:16PM</p> <p>6 Q. Do you have any evidence that 04:00:17PM</p> <p>7 you can point to as we sit here today that 04:00:18PM</p> <p>8 there was speculation about the earnings 04:00:20PM</p> <p>9 announcement on April 25th that was moving 04:00:22PM</p> <p>10 the market on April 18th? 04:00:24PM</p> <p>11 A. No. But, again, I haven't set 04:00:26PM</p> <p>12 out to determine the cause of the increase 04:00:29PM</p> <p>13 on April 19th and I don't think it was 04:00:31PM</p> <p>14 relevant. 04:00:33PM</p> <p>15 I was trying to be responsive 04:00:33PM</p> <p>16 to your question about do I have any other 04:00:35PM</p> <p>17 explanation, and I'm saying as I sit here 04:00:36PM</p> <p>18 without having done analysis to be 04:00:40PM</p> <p>19 responsive to your question, one possible 04:00:42PM</p> <p>20 explanation would be speculation about the 04:00:44PM</p> <p>21 earnings report that proved to be wrong. 04:00:46PM</p> <p>22 Q. But there was not a specific 04:00:49PM</p> <p>23 analyst report or news article that you 04:00:50PM</p> <p>24 would point to to refer to such 04:00:52PM</p> <p>25 speculation? 04:00:55PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 alleged misrepresentations. 04:01:53PM</p> <p>3 And, therefore, regardless of, 04:01:55PM</p> <p>4 you know, how many shares Ms. Cox and 04:01:58PM</p> <p>5 Dr. Geis were selling during this period, 04:02:01PM</p> <p>6 there is no scientific basis to conclude 04:02:03PM</p> <p>7 that they were selling those shares at 04:02:05PM</p> <p>8 artificially inflated prices. 04:02:08PM</p> <p>9 Q. So your opinion relates to the 04:02:08PM</p> <p>10 inflation, not to whether they sold based 04:02:09PM</p> <p>11 on inside information; is that correct? 04:02:11PM</p> <p>12 A. My only hesitancy is when you 04:02:19PM</p> <p>13 say "based on inside information," inside 04:02:21PM</p> <p>14 information concerning what? 04:02:23PM</p> <p>15 Q. Well, let's talk about CLASS. 04:02:25PM</p> <p>16 You are not offering an opinion 04:02:27PM</p> <p>17 that Dr. Geis or Ms. Cox were not in 04:02:29PM</p> <p>18 possession of the entire study data at the 04:02:33PM</p> <p>19 time they sold; are you offering that 04:02:36PM</p> <p>20 opinion, sir? 04:02:38PM</p> <p>21 A. I don't have an opinion either 04:02:40PM</p> <p>22 way on that. That's a factual matter that 04:02:42PM</p> <p>23 goes beyond my expertise. 04:02:44PM</p> <p>24 Q. Because you are just testifying 04:02:45PM</p> <p>25 or you are just offering an opinion that 04:02:47PM</p>                 |
| Page 327                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 329                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. I haven't looked for it, again, 04:00:55PM</p> <p>3 because I don't think it is relevant for 04:00:58PM</p> <p>4 my opinion. 04:00:59PM</p> <p>5 Q. Now, at paragraph 16 of your 04:01:00PM</p> <p>6 report, you are offering an opinion about 04:01:09PM</p> <p>7 insider sales. I guess that's the 04:01:12PM</p> <p>8 summary. You say "Based on the results of 04:01:14PM</p> <p>9 the event study analysis, I conclude that 04:01:16PM</p> <p>10 there is no scientific basis to conclude 04:01:18PM</p> <p>11 that Ms. Cox and Dr. Geis sold Pharmacia 04:01:21PM</p> <p>12 stock during the class period at stock 04:01:25PM</p> <p>13 prices that were artificially inflated 04:01:27PM</p> <p>14 because of the alleged 04:01:29PM</p> <p>15 misrepresentations." 04:01:30PM</p> <p>16 What are the bases of that 04:01:30PM</p> <p>17 opinion? 04:01:32PM</p> <p>18 A. Well, again, the fact that 04:01:33PM</p> <p>19 after conducting my analysis I've 04:01:37PM</p> <p>20 concluded there is no scientific basis to 04:01:40PM</p> <p>21 believe that the alleged 04:01:43PM</p> <p>22 misrepresentations were material, and by 04:01:43PM</p> <p>23 implication there is no scientific basis 04:01:46PM</p> <p>24 to believe that Pharmacia's stock price 04:01:48PM</p> <p>25 was artificially inflated because of the 04:01:50PM</p>                              | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the price -- you don't believe the price 04:02:49PM</p> <p>3 was inflated at the time they sold, at the 04:02:51PM</p> <p>4 dates they sold, your opinion is that the 04:02:52PM</p> <p>5 stock was not inflated on those dates as a 04:02:54PM</p> <p>6 result of the alleged fraud here? 04:02:57PM</p> <p>7 A. Not to parse words, but to be 04:02:58PM</p> <p>8 specific, though, my position, my opinion, 04:03:01PM</p> <p>9 is that there is no scientific basis to 04:03:03PM</p> <p>10 conclude that there was artificial 04:03:05PM</p> <p>11 inflation in Pharmacia's stock price, and 04:03:07PM</p> <p>12 therefore there is no scientific basis to 04:03:10PM</p> <p>13 conclude that Ms. Cox and Dr. Geis were 04:03:12PM</p> <p>14 selling shares at a time when Pharmacia's 04:03:16PM</p> <p>15 stock price was artificially inflated. 04:03:18PM</p> <p>16 Q. But you don't have an opinion 04:03:20PM</p> <p>17 as to whether or not they were in 04:03:22PM</p> <p>18 possession of material nonpublic 04:03:23PM</p> <p>19 information at the time they sold the 04:03:25PM</p> <p>20 stock? 04:03:27PM</p> <p>21 A. I don't know what they were in 04:03:28PM</p> <p>22 possession of at the time they sold the 04:03:30PM</p> <p>23 stock. 04:03:31PM</p> <p>24 Q. You didn't take any steps to 04:03:31PM</p> <p>25 interview them or ask them about what they 04:03:33PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 knew at the time they sold, correct? 04:03:35PM</p> <p>3 A. That is correct. 04:03:36PM</p> <p>4 Q. You didn't review the documents 04:03:37PM</p> <p>5 to determine whether they were in 04:03:39PM</p> <p>6 possession of the entire study data at the 04:03:41PM</p> <p>7 time that they sold, correct? 04:03:43PM</p> <p>8 A. That is correct. But what I 04:03:44PM</p> <p>9 did know is what the allegations were in 04:03:47PM</p> <p>10 this matter, and after conducting my 04:03:50PM</p> <p>11 analysis I concluded that there is no 04:03:53PM</p> <p>12 scientific basis to conclude that the 04:03:54PM</p> <p>13 alleged misrepresentations artificially 04:03:57PM</p> <p>14 inflated Pharmacia stock price. 04:04:04PM</p> <p>15 Q. Now, is it accurate that 04:04:06PM</p> <p>16 Exhibits 500 and 516, your report and your 04:05:03PM</p> <p>17 rebuttal report, fully set forth the 04:05:06PM</p> <p>18 opinions that you intend to offer in this 04:05:09PM</p> <p>19 case as of today's date? 04:05:11PM</p> <p>20 MR. WANG: Objection to form. 04:05:13PM</p> <p>21 A. As of today's date, that is 04:05:14PM</p> <p>22 correct, with at least one qualification, 04:05:19PM</p> <p>23 and that is that I haven't had a chance to 04:05:25PM</p> <p>24 fully review Dr. Feinstein's deposition 04:05:28PM</p> <p>25 transcript, and insofar that there is 04:05:30PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Any other assumptions? 04:06:33PM</p> <p>3 A. I can't think of any that would 04:06:38PM</p> <p>4 be particularly relevant. 04:06:47PM</p> <p>5 Q. And is there any literature 04:06:49PM</p> <p>6 that you reviewed that contradicts your 04:06:51PM</p> <p>7 opinions in any way? 04:06:52PM</p> <p>8 A. No. 04:06:55PM</p> <p>9 Q. Is there any evidence that you 04:06:58PM</p> <p>10 reviewed and discounted? 04:07:00PM</p> <p>11 MR. WANG: Objection to form. 04:07:04PM</p> <p>12 A. Discounted in forming my 04:07:05PM</p> <p>13 opinion or discounted because I didn't 04:07:07PM</p> <p>14 think it was particularly good evidence? 04:07:08PM</p> <p>15 Q. Was there any particular 04:07:11PM</p> <p>16 evidence that you disregarded as 04:07:13PM</p> <p>17 unimportant in coming up with your 04:07:14PM</p> <p>18 opinions? 04:07:16PM</p> <p>19 MR. WANG: Objection. 04:07:17PM</p> <p>20 A. I'm not sure I -- I mean, 04:07:20PM</p> <p>21 obviously one sets out to do a thorough 04:07:23PM</p> <p>22 job that one is asked to form an opinion 04:07:30PM</p> <p>23 on. I'm not sure what you mean by 04:07:32PM</p> <p>24 "disregard information." 04:07:37PM</p> <p>25 Q. Well, for instance, could I 04:07:42PM</p>                                                                                                                                             |
| Page 331                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 333                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 trial testimony from Dr. Feinstein, I may 04:05:35PM</p> <p>3 be asked to opine as to his trial 04:05:38PM</p> <p>4 testimony as well. 04:05:40PM</p> <p>5 Q. And are there any other areas 04:05:40PM</p> <p>6 that you have been asked by the defense 04:05:44PM</p> <p>7 lawyers in this case to provide opinions 04:05:47PM</p> <p>8 other than what's in your two reports? 04:05:48PM</p> <p>9 MR. WANG: Objection to form. 04:05:51PM</p> <p>10 A. Not as I sit here today. 04:05:52PM</p> <p>11 Q. And is the bases for your 04:05:55PM</p> <p>12 opinions expressed, regarding loss 04:05:57PM</p> <p>13 causation and materiality, fully set forth 04:06:00PM</p> <p>14 in the two reports? 04:06:02PM</p> <p>15 MR. WANG: Objection to form. 04:06:04PM</p> <p>16 A. They are, yes. 04:06:06PM</p> <p>17 Q. And are there any assumptions 04:06:07PM</p> <p>18 underlying your opinions regarding 04:06:10PM</p> <p>19 causation and materiality? 04:06:12PM</p> <p>20 A. Well, there are a lot of pieces 04:06:14PM</p> <p>21 of the analysis that I did, but perhaps 04:06:22PM</p> <p>22 the most salient assumption is that for 04:06:25PM</p> <p>23 purposes of assessing materiality and loss 04:06:28PM</p> <p>24 causation, I assume that the alleged 04:06:30PM</p> <p>25 misrepresentations occurred. 04:06:32PM</p>                                                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 refer you to page 29 of your report, 04:07:44PM</p> <p>3 specifically paragraph 40 -- or footnote 04:07:47PM</p> <p>4 40. And you are referring to -- you said 04:07:50PM</p> <p>5 "I am aware of only one analyst, Enskilda 04:07:56PM</p> <p>6 Securities, that revised its EPS 04:07:59PM</p> <p>7 projections downward by almost 9 percent." 04:08:02PM</p> <p>8 Why do you discount the 04:08:03PM</p> <p>9 reduction in EPS projections of the 04:08:05PM</p> <p>10 Enskilda analyst? 04:08:08PM</p> <p>11 MR. WANG: Objection. 04:08:11PM</p> <p>12 Q. In footnote 40. 04:08:12PM</p> <p>13 A. Well, it is anecdotal, it is 04:08:13PM</p> <p>14 one analyst of many. As I indicated, if 04:08:16PM</p> <p>15 you look at the exhibit, you will see that 04:08:18PM</p> <p>16 Enskilda was well above the other analysts 04:08:21PM</p> <p>17 in their projected EPS for Pharmacia, and 04:08:24PM</p> <p>18 what they did was they revised the EPS 04:08:28PM</p> <p>19 number downward and into line with the 04:08:31PM</p> <p>20 other analysts. But that's a lot 04:08:33PM</p> <p>21 different than having all analysts or 04:08:36PM</p> <p>22 almost all analysts dramatically changing 04:08:38PM</p> <p>23 their EPS projections, which does happen 04:08:41PM</p> <p>24 around some corporate events. 04:08:44PM</p> <p>25 So, you know, I reported it and 04:08:46PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 I disclosed it, but I wouldn't put much 04:08:48PM</p> <p>3 weight on this if it were an academic 04:08:51PM</p> <p>4 paper and I don't place much weight on it 04:08:54PM</p> <p>5 in this report. 04:08:56PM</p> <p>6 Q. And there were other analysts 04:08:56PM</p> <p>7 that revised their earnings downward less 04:08:58PM</p> <p>8 than 9 percent; is that correct? 04:09:00PM</p> <p>9 A. Well, I think right around this 04:09:01PM</p> <p>10 date, we can look, I think they were the 04:09:03PM</p> <p>11 only one. I mean, it is best probably 04:09:06PM</p> <p>12 just to look directly at the data. 04:09:13PM</p> <p>13 Q. I'm just wondering why it is 04:09:13PM</p> <p>14 worded as "I'm aware of only one analyst, 04:09:15PM</p> <p>15 Enskilda, that revised its EPS projections 04:09:18PM</p> <p>16 downward by almost 9 percent." 04:09:18PM</p> <p>17 Are you saying that there were 04:09:20PM</p> <p>18 others that revised it less than 9 percent 04:09:21PM</p> <p>19 or are you just commenting on the amount 04:09:24PM</p> <p>20 of the Enskilda revision in footnote 40? 04:09:26PM</p> <p>21 A. My recollection is they were 04:09:30PM</p> <p>22 the only one to revise downward at all, 04:09:33PM</p> <p>23 and the amount by which they revised down 04:09:36PM</p> <p>24 was 9 percent. 04:09:39PM</p> <p>25 Q. And did you consider the 04:09:45PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. That's correct. And there 04:10:40PM</p> <p>3 presumably would be some intermediary 04:10:43PM</p> <p>4 steps. 04:10:45PM</p> <p>5 My recollection is that shortly 04:10:46PM</p> <p>6 after the February 7th Advisory Committee 04:10:47PM</p> <p>7 recommendation, Pharmacia received an 04:10:51PM</p> <p>8 approval letter from the FDA that was in 04:10:55PM</p> <p>9 April of 2001, and then my recollection is 04:10:57PM</p> <p>10 that the label change was approved in June 04:11:01PM</p> <p>11 of 2002. And I presume there were several 04:11:04PM</p> <p>12 steps obviously along the way there. 04:11:08PM</p> <p>13 Q. But that label change, it 04:11:09PM</p> <p>14 didn't remove the NSAID GI warning, 04:11:11PM</p> <p>15 correct? 04:11:14PM</p> <p>16 A. It modified the label and 04:11:14PM</p> <p>17 incorporated I believe nine months of data 04:11:18PM</p> <p>18 and referred to the data of Celebrex 04:11:22PM</p> <p>19 versus the symptomatic ulcers and the 04:11:25PM</p> <p>20 ulcer complications. And my recollection 04:11:27PM</p> <p>21 is it also excluded the people taking 04:11:30PM</p> <p>22 aspirin. 04:11:32PM</p> <p>23 Q. But it didn't include 04:11:32PM</p> <p>24 comparative p-values, correct? 04:11:34PM</p> <p>25 A. I don't recall as I sit here. 04:11:36PM</p> |
| Page 335                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 337                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 process by which a label would be revised 04:09:53PM</p> <p>3 by the FDA in your consideration of the 04:09:56PM</p> <p>4 revisions by the analysts during the class 04:10:00PM</p> <p>5 period? 04:10:04PM</p> <p>6 MR. WANG: Objection. Vague 04:10:04PM</p> <p>7 and ambiguous. 04:10:06PM</p> <p>8 Q. Well, do you understand that on 04:10:08PM</p> <p>9 February 7th there was an Advisory 04:10:09PM</p> <p>10 Committee meeting, right? 04:10:11PM</p> <p>11 A. Correct. 04:10:12PM</p> <p>12 Q. And by definition an Advisory 04:10:13PM</p> <p>13 Committee is giving advice about the 04:10:15PM</p> <p>14 potential for an FDA label change in the 04:10:17PM</p> <p>15 future, correct? 04:10:21PM</p> <p>16 A. Correct. 04:10:22PM</p> <p>17 Q. And did you consider the 04:10:22PM</p> <p>18 process of how long it would take if there 04:10:23PM</p> <p>19 was a positive recommendation by the 04:10:25PM</p> <p>20 Advisory Committee, that wouldn't 04:10:29PM</p> <p>21 immediately come into law and change the 04:10:31PM</p> <p>22 label, correct, there would have to be 04:10:33PM</p> <p>23 action by the FDA subsequent to that date 04:10:35PM</p> <p>24 to actually change the label; is that 04:10:38PM</p> <p>25 correct? 04:10:40PM</p>                                                                                                                         | <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And it didn't remove the black 04:11:38PM</p> <p>3 box NSAID GI warning? 04:11:41PM</p> <p>4 MR. WANG: Objection. 04:11:45PM</p> <p>5 A. I'm not sure what you mean by 04:11:46PM</p> <p>6 "the black box." 04:11:47PM</p> <p>7 Q. You are not an expert in FDA 04:11:48PM</p> <p>8 labeling? 04:11:50PM</p> <p>9 A. I'm not an expert in FDA 04:11:50PM</p> <p>10 labeling. 04:11:52PM</p> <p>11 Q. And you don't know what the 04:11:52PM</p> <p>12 black box warning is? 04:11:54PM</p> <p>13 A. It is a term of art that goes 04:11:55PM</p> <p>14 beyond my expertise in finance. 04:11:57PM</p> <p>15 Q. And since you don't know what 04:12:01PM</p> <p>16 it is, you can't offer an opinion as to 04:12:02PM</p> <p>17 whether it was removed or not, correct? 04:12:04PM</p> <p>18 A. Well, I have an exhibit that 04:12:06PM</p> <p>19 compares the old label to the new label, 04:12:08PM</p> <p>20 the new label being the June 2002 label. 04:12:11PM</p> <p>21 As I sit here, I would just to have 04:12:13PM</p> <p>22 refresh my memory. 04:12:17PM</p> <p>23 Q. And we can look at that and 04:12:17PM</p> <p>24 tell whether p-values are included, 04:12:19PM</p> <p>25 correct? 04:12:21PM</p>                                                                                                            |

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| Page 338                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 340                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Correct. 04:12:21PM</p> <p>3 Q. And once the FDA, the full FDA 04:12:22PM</p> <p>4 or the relevant individual or individuals 04:12:27PM</p> <p>5 at the FDA make a decision that a label is 04:12:29PM</p> <p>6 going to be revised, there is also some 04:12:31PM</p> <p>7 time after that before the label is 04:12:33PM</p> <p>8 reprinted and redistributed? 04:12:34PM</p> <p>9 A. Again, I'm not an expert on the 04:12:37PM</p> <p>10 FDA processes here. 04:12:39PM</p> <p>11 Q. But the company would have to 04:12:41PM</p> <p>12 incorporate that label change, put it in 04:12:43PM</p> <p>13 the packaging and disseminate it before 04:12:45PM</p> <p>14 anyone would be able to see it, correct? 04:12:47PM</p> <p>15 A. It seems like a reasonable 04:12:51PM</p> <p>16 assumption. 04:12:52PM</p> <p>17 Q. So it is fair to say that there 04:12:53PM</p> <p>18 would be some lag time even if the 04:12:55PM</p> <p>19 Advisory Committee was going to vote on a 04:12:56PM</p> <p>20 label change positively on February 7th, 04:13:00PM</p> <p>21 there would be some lag time before that 04:13:03PM</p> <p>22 label made its way into the marketplace in 04:13:05PM</p> <p>23 the packaging and could actually impact 04:13:10PM</p> <p>24 sales in the future; is that a fair 04:13:12PM</p> <p>25 assumption? 04:13:15PM</p>                     | <p>1 LEHN - CONFIDENTIAL</p> <p>2 have an impact on sales prior to the 04:14:07PM</p> <p>3 actual label change being included with 04:14:08PM</p> <p>4 the medication. 04:14:15PM</p> <p>5 If there is publicity and 04:14:18PM</p> <p>6 people learn of this and the doctor 04:14:19PM</p> <p>7 community is aware of all this, I see no 04:14:22PM</p> <p>8 reason why you wouldn't see potentially at 04:14:26PM</p> <p>9 least theoretically an increase in sales 04:14:29PM</p> <p>10 prior to the actual implementation of the 04:14:32PM</p> <p>11 label change. 04:14:35PM</p> <p>12 Q. But if the FDA wasn't going to 04:14:36PM</p> <p>13 make a decision until, say, three months, 04:14:38PM</p> <p>14 we will just take that as an arbitrary 04:14:41PM</p> <p>15 number, until three months after the 04:14:43PM</p> <p>16 Advisory Committee vote, that would not 04:14:44PM</p> <p>17 have impact in the current quarter because 04:14:46PM</p> <p>18 there wouldn't be a label change at the 04:14:48PM</p> <p>19 earliest until three months later, so the 04:14:50PM</p> <p>20 Advisory Committee vote wouldn't directly 04:14:52PM</p> <p>21 impact at least the next quarter's 04:14:55PM</p> <p>22 projected sales; is that correct? 04:14:58PM</p> <p>23 A. Again, with the caveat that I'm 04:15:01PM</p> <p>24 not portraying myself as an expert in this 04:15:04PM</p> <p>25 area, but factually we do know that with 04:15:07PM</p> |
| Page 339                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 341                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Well, the first part seems 04:13:17PM</p> <p>3 reasonable. Again, it is not my area of 04:13:19PM</p> <p>4 expertise. But the first part seems 04:13:21PM</p> <p>5 reasonable. 04:13:23PM</p> <p>6 In terms of impacting sales, 04:13:23PM</p> <p>7 I'm not sure, because presumably people 04:13:25PM</p> <p>8 get information from more than just a 04:13:29PM</p> <p>9 label, and if there had been publicity to 04:13:31PM</p> <p>10 this effect, that could affect sales prior 04:13:34PM</p> <p>11 to the label change. 04:13:36PM</p> <p>12 Q. My point is that the label 04:13:37PM</p> <p>13 change wouldn't have an immediate impact 04:13:38PM</p> <p>14 on sales, or the recommendation of the 04:13:40PM</p> <p>15 Advisory Committee wouldn't have an 04:13:42PM</p> <p>16 immediate impact on future sales because 04:13:45PM</p> <p>17 there are several steps that would have to 04:13:47PM</p> <p>18 occur subsequently before that label could 04:13:49PM</p> <p>19 be incorporated and ultimately impact 04:13:55PM</p> <p>20 ultimate users of the drug in their 04:13:55PM</p> <p>21 purchasing decision? 04:14:00PM</p> <p>22 MR. WANG: Objection. 04:14:00PM</p> <p>23 A. Again, I'm not an expert on 04:14:02PM</p> <p>24 this particular topic, but as a matter of 04:14:03PM</p> <p>25 economics it seems to me that you could 04:14:05PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the old label, the initial label, Celebrex 04:15:12PM</p> <p>3 was the most successful drug launch, from 04:15:16PM</p> <p>4 what I've read and understand. From 1998 04:15:20PM</p> <p>5 to 2000 sales increased with that initial 04:15:26PM</p> <p>6 label, which means presumably doctors and 04:15:30PM</p> <p>7 perhaps others, you know, believed that 04:15:36PM</p> <p>8 this product was worth the higher price 04:15:38PM</p> <p>9 presumably because of their belief that it 04:15:41PM</p> <p>10 was a safer product. 04:15:45PM</p> <p>11 And so when it comes to your 04:15:47PM</p> <p>12 question about could you get sales 04:15:48PM</p> <p>13 increasing immediately if additional 04:15:50PM</p> <p>14 information is produced and generates 04:15:56PM</p> <p>15 additional confidence in the medical 04:15:58PM</p> <p>16 community, I don't see why you couldn't 04:15:59PM</p> <p>17 prior to the actual label change going 04:16:02PM</p> <p>18 into effect. 04:16:05PM</p> <p>19 Q. Has your testimony ever been -- 04:16:05PM</p> <p>20 strike that. 04:16:08PM</p> <p>21 Have you ever had opinions 04:16:08PM</p> <p>22 rejected by a court in any previous case 04:16:09PM</p> <p>23 that you've worked on? 04:16:13PM</p> <p>24 A. Not that I'm aware of. 04:16:15PM</p> <p>25 Q. Have you ever been subject to a 04:16:17PM</p>                                                              |

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| <p style="text-align: right;">Page 342</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Daubert challenge? 04:16:19PM</p> <p>3 A. I've been subject to them a 04:16:20PM</p> <p>4 couple of times, or maybe more than a 04:16:22PM</p> <p>5 couple of times. As far as I know it has 04:16:24PM</p> <p>6 never been upheld. 04:16:28PM</p> <p>7 Q. Any particular opinions you've 04:16:29PM</p> <p>8 ever put forward, have you ever been 04:16:32PM</p> <p>9 denied the right to offer those opinions 04:16:34PM</p> <p>10 in court? 04:16:35PM</p> <p>11 A. Not that I recall, no. 04:16:36PM</p> <p>12 Q. Have your opinions ever been 04:16:38PM</p> <p>13 criticized by a court? 04:16:40PM</p> <p>14 A. Not that I'm aware of. 04:16:42PM</p> <p>15 Q. Can you break down -- and maybe 04:16:43PM</p> <p>16 you have done this already, but I don't 04:16:45PM</p> <p>17 think you have done it precisely -- the 04:16:47PM</p> <p>18 percentage of your testimony that has been 04:16:50PM</p> <p>19 on behalf of defendants as opposed to 04:16:51PM</p> <p>20 plaintiffs in securities cases? 04:16:54PM</p> <p>21 A. By "securities cases," meaning 04:16:56PM</p> <p>22 class action cases? 04:16:57PM</p> <p>23 Q. Yes, correct. 04:16:59PM</p> <p>24 A. Not SEC cases? 04:16:59PM</p> <p>25 Q. Let's just do class actions 04:17:01PM</p>                       | <p style="text-align: right;">Page 344</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. In this matter? 04:17:58PM</p> <p>3 Q. Yes, in this matter. 04:17:59PM</p> <p>4 A. Going back to the 2006 class 04:18:01PM</p> <p>5 cert stuff? 04:18:05PM</p> <p>6 Q. Yeah, just in this case, the 04:18:06PM</p> <p>7 Alaska Electrical versus Pharmacia, this 04:18:09PM</p> <p>8 actual case, what is your total 04:18:11PM</p> <p>9 compensation to the best of your 04:18:13PM</p> <p>10 recollection? 04:18:14PM</p> <p>11 A. And I apologize, but that would 04:18:14PM</p> <p>12 include then the work I had done at the 04:18:17PM</p> <p>13 class certification stage? 04:18:19PM</p> <p>14 Q. Yes. 04:18:21PM</p> <p>15 A. Well, on two counts I can't 04:18:21PM</p> <p>16 tell you definitively. I don't recall, 04:18:25PM</p> <p>17 frankly, what my billings were in the 04:18:27PM</p> <p>18 first stage, but that was five years ago, 04:18:33PM</p> <p>19 I had a different rate and I forget the 04:18:37PM</p> <p>20 number of hours, so I would only be 04:18:39PM</p> <p>21 guessing, but my guess is it would 04:18:41PM</p> <p>22 probably be somewhere in the vicinity of 04:18:44PM</p> <p>23 maybe \$50,000. That's just a rough, rough 04:18:47PM</p> <p>24 estimate. 04:18:53PM</p> <p>25 Q. \$50,000 for the class cert? 04:18:53PM</p>                                            |
| <p style="text-align: right;">Page 343</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 where there is two independent, you know, 04:17:03PM</p> <p>3 civil parties, as opposed to a government 04:17:05PM</p> <p>4 entity. 04:17:08PM</p> <p>5 A. Sure. 04:17:09PM</p> <p>6 With respect to class action 04:17:09PM</p> <p>7 securities matters, 100 percent of the 04:17:12PM</p> <p>8 time has been on behalf of the defendants. 04:17:14PM</p> <p>9 There have been other securities cases 04:17:19PM</p> <p>10 where I've worked for -- been retained by 04:17:21PM</p> <p>11 counsel for plaintiffs, but they were not 04:17:26PM</p> <p>12 class action matters. 04:17:30PM</p> <p>13 Q. So in individual cases you have 04:17:31PM</p> <p>14 worked for the plaintiffs? 04:17:33PM</p> <p>15 A. I have. And I've worked for 04:17:34PM</p> <p>16 the government, as I indicated, the 04:17:38PM</p> <p>17 Securities and Exchange Commission and the 04:17:40PM</p> <p>18 Department of Justice where they were the 04:17:42PM</p> <p>19 plaintiffs probably at least a dozen 04:17:45PM</p> <p>20 times. 04:17:48PM</p> <p>21 Q. And you are being compensated 04:17:49PM</p> <p>22 at \$950 an hour in this case? 04:17:52PM</p> <p>23 A. That is correct. 04:17:55PM</p> <p>24 Q. And what is your total 04:17:55PM</p> <p>25 compensation to date? 04:17:58PM</p> | <p style="text-align: right;">Page 345</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. For the class cert. 04:18:55PM</p> <p>3 Q. What about in the later phase 04:18:56PM</p> <p>4 and these two reports and whatever other 04:18:58PM</p> <p>5 work you have done in 2010-2011 time 04:18:59PM</p> <p>6 frame? 04:19:03PM</p> <p>7 A. Right. I recall sending an 04:19:03PM</p> <p>8 invoice a few months ago, and I think it 04:19:05PM</p> <p>9 was around \$85,000, somewhere in the 85 to 04:19:09PM</p> <p>10 \$90,000 range, and I haven't sent an 04:19:14PM</p> <p>11 invoice for the work I've done in 04:19:18PM</p> <p>12 preparing for the deposition and for the 04:19:20PM</p> <p>13 deposition. But I would suspect that 04:19:22PM</p> <p>14 would be an additional, you know, 40 to 04:19:24PM</p> <p>15 \$50,000. 04:19:28PM</p> <p>16 Q. And what about for the 04:19:28PM</p> <p>17 preparation of the initial report in March 04:19:29PM</p> <p>18 of this year? 04:19:33PM</p> <p>19 A. Well, that's what I was 04:19:33PM</p> <p>20 referring to, is the invoice that I 04:19:34PM</p> <p>21 submitted two or three months ago was for 04:19:37PM</p> <p>22 everything at this stage, all the work I 04:19:39PM</p> <p>23 had done in preparing my initial report 04:19:41PM</p> <p>24 and the rebuttal report. 04:19:43PM</p> <p>25 Q. And is that invoice still 04:19:44PM</p> |

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| <p style="text-align: right;">Page 346</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 outstanding? 04:19:46PM</p> <p>3 A. It is, as a matter of fact. 04:19:47PM</p> <p>4 Q. Do you have an understanding 04:19:48PM</p> <p>5 why you haven't been paid on that yet? 04:19:49PM</p> <p>6 A. I'm not maybe as aggressive in 04:19:53PM</p> <p>7 pursuing it, but it has only been probably 04:19:56PM</p> <p>8 two months or so, two to three months. 04:19:59PM</p> <p>9 Q. And you have an equity holding 04:20:01PM</p> <p>10 in -- are you still at Cornerstone or have 04:20:03PM</p> <p>11 you switched, or have you switched to 04:20:06PM</p> <p>12 Cornerstone? Where are you employed now, 04:20:10PM</p> <p>13 sir? 04:20:13PM</p> <p>14 A. The University of Pittsburgh. 04:20:13PM</p> <p>15 Q. Other than that? 04:20:14PM</p> <p>16 A. I'm an independent contractor. 04:20:15PM</p> <p>17 I never had a formal contractual 04:20:17PM</p> <p>18 arrangement with Cornerstone in the sense 04:20:21PM</p> <p>19 of a written contract of any sort. But I 04:20:24PM</p> <p>20 did work with Cornerstone, I still do work 04:20:27PM</p> <p>21 with Cornerstone. But about two years ago 04:20:31PM</p> <p>22 I also affiliated with Compass Lexecon, 04:20:34PM</p> <p>23 which is a subsidiary of FTI. 04:20:36PM</p> <p>24 Q. And is this engagement through 04:20:38PM</p> <p>25 Cornerstone or Compass Lexecon? 04:20:40PM</p> | <p style="text-align: right;">Page 348</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 providing other services as well. 04:21:42PM</p> <p>3 Q. Now, the bills that you 04:21:44PM</p> <p>4 referenced earlier, the invoices, would 04:21:45PM</p> <p>5 that include others that have assisted you 04:21:47PM</p> <p>6 in your engagement? 04:21:49PM</p> <p>7 A. No. I bill separately from 04:21:50PM</p> <p>8 Cornerstone. So I bill the client 04:21:54PM</p> <p>9 directly, and as far as I know they don't 04:21:57PM</p> <p>10 know how much my invoice is, and I 04:21:59PM</p> <p>11 certainly don't know how much their 04:22:02PM</p> <p>12 invoices are. 04:22:03PM</p> <p>13 Q. But you rely on individuals at 04:22:04PM</p> <p>14 Cornerstone to provide support services to 04:22:06PM</p> <p>15 you in providing these opinions? 04:22:09PM</p> <p>16 A. I do. 04:22:10PM</p> <p>17 Q. And who are the individuals you 04:22:11PM</p> <p>18 relied on? 04:22:12PM</p> <p>19 A. In this case? 04:22:13PM</p> <p>20 Q. In this case. 04:22:13PM</p> <p>21 A. Well, the two principal ones 04:22:15PM</p> <p>22 were -- and, again, we are talking about 04:22:16PM</p> <p>23 this stage or the class cert stage? 04:22:20PM</p> <p>24 Q. Let's talk about this stage 04:22:22PM</p> <p>25 right now. 04:22:24PM</p> |
| <p style="text-align: right;">Page 347</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. This is with Cornerstone. 04:20:42PM</p> <p>3 Q. And do you have a 04:20:44PM</p> <p>4 profit-sharing arrangement with 04:20:46PM</p> <p>5 Cornerstone where you get some percentage 04:20:48PM</p> <p>6 of the profits on a quarterly or annual 04:20:50PM</p> <p>7 basis? 04:20:52PM</p> <p>8 MR. WANG: Objection. 04:20:53PM</p> <p>9 A. It is not a profit-sharing 04:20:53PM</p> <p>10 arrangement and it is nothing formal, 04:20:55PM</p> <p>11 there is no specified amount that I 04:20:59PM</p> <p>12 receive, but Cornerstone, as Compass 04:21:02PM</p> <p>13 Lexecon and others do, it is pretty common 04:21:06PM</p> <p>14 practice that when an independent 04:21:11PM</p> <p>15 contractor is working with their staff, 04:21:13PM</p> <p>16 that they provide the independent 04:21:16PM</p> <p>17 contractor with some compensation for 04:21:17PM</p> <p>18 managing the staff. And it goes actually 04:21:20PM</p> <p>19 beyond that, it is not only managing the 04:21:25PM</p> <p>20 staff, but Cornerstone would often ask me 04:21:27PM</p> <p>21 to speak at a conference or some kind of 04:21:31PM</p> <p>22 recruiting function. 04:21:33PM</p> <p>23 So the compensation was not 04:21:36PM</p> <p>24 only for working with their staff and 04:21:38PM</p> <p>25 managing their staff on projects, but for 04:21:40PM</p> | <p style="text-align: right;">Page 349</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. The two principal ones at this 04:22:24PM</p> <p>3 stage are Ravi, R-a-v-i, Sinha, S-i-n-h-a, 04:22:27PM</p> <p>4 and Dan Garrett, G-a-r-r-e-t-t. 04:22:32PM</p> <p>5 Q. And you don't know how much 04:22:36PM</p> <p>6 they have billed or how much time they 04:22:37PM</p> <p>7 have spent in their engagement on this 04:22:39PM</p> <p>8 case? 04:22:41PM</p> <p>9 A. I do not. 04:22:41PM</p> <p>10 Q. And they are Cornerstone 04:22:42PM</p> <p>11 employees? 04:22:46PM</p> <p>12 A. They are. 04:22:46PM</p> <p>13 Q. And they aren't doing the work 04:22:46PM</p> <p>14 for free, correct? 04:22:48PM</p> <p>15 A. I don't know factually, but I 04:22:49PM</p> <p>16 presume they are not. 04:22:51PM</p> <p>17 Q. And Cornerstone is billing the 04:22:52PM</p> <p>18 defendants in this case for the work of 04:22:54PM</p> <p>19 Mr. Sinha and Mr. Garrett? 04:22:56PM</p> <p>20 A. I can only presume they are, 04:22:59PM</p> <p>21 but I don't have any firsthand knowledge 04:23:02PM</p> <p>22 as to that. 04:23:03PM</p> <p>23 Q. And what have you relied on 04:23:04PM</p> <p>24 Mr. Sinha to do in this case? 04:23:05PM</p> <p>25 A. Well, several things. One is, 04:23:08PM</p>                             |

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 you know, initially when asked to form 04:23:13PM</p> <p>3 opinions and submit a report, I talked to 04:23:18PM</p> <p>4 him about the work that I wanted to do, 04:23:20PM</p> <p>5 and in the context of this report there 04:23:24PM</p> <p>6 were some parallels obviously to the 04:23:27PM</p> <p>7 report submitted at the class 04:23:30PM</p> <p>8 certification stage, but there also were 04:23:32PM</p> <p>9 some differences that required some 04:23:34PM</p> <p>10 changes in the empirical methodology, most 04:23:36PM</p> <p>11 notably changing the class period. 04:23:40PM</p> <p>12 So, anyway, I talked to him 04:23:45PM</p> <p>13 about that. I sent him an outline of the 04:23:47PM</p> <p>14 work that would be reflected in the 04:23:50PM</p> <p>15 report. And he I presume managed some 04:23:56PM</p> <p>16 research assistants to gather data and 04:23:59PM</p> <p>17 information and perform the empirical work 04:24:01PM</p> <p>18 under my direction and provided me with 04:24:05PM</p> <p>19 the results of the empirical work that I 04:24:08PM</p> <p>20 asked to have done, and we had some phone 04:24:10PM</p> <p>21 calls and talked about it, and then I 04:24:13PM</p> <p>22 typically suggest more work or different 04:24:15PM</p> <p>23 work. 04:24:18PM</p> <p>24 And so he basically was 04:24:22PM</p> <p>25 managing the work flow at Cornerstone in 04:24:23PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 that. 04:25:22PM</p> <p>3 Q. Cornerstone is a business, 04:25:22PM</p> <p>4 right? 04:25:24PM</p> <p>5 A. It is, correct. 04:25:25PM</p> <p>6 Q. And they want to make money 04:25:25PM</p> <p>7 just like any other business? 04:25:27PM</p> <p>8 A. I presume they do. 04:25:30PM</p> <p>9 Q. So you would expect that they 04:25:31PM</p> <p>10 are billing the defendants, correct? 04:25:33PM</p> <p>11 A. That would be my expectation. 04:25:35PM</p> <p>12 I just don't have factual knowledge. 04:25:36PM</p> <p>13 Q. You would probably be shocked 04:25:38PM</p> <p>14 if they weren't; is that fair to say? 04:25:39PM</p> <p>15 A. I would be surprised, yes. 04:25:41PM</p> <p>16 Q. And you were going on to 04:25:43PM</p> <p>17 describe before I rudely interrupted you 04:25:45PM</p> <p>18 the other things that Mr. Sinha did. 04:25:47PM</p> <p>19 A. Right. 04:25:49PM</p> <p>20 And then, you know, I asked 04:25:50PM</p> <p>21 him, I submitted the first draft and gave 04:25:52PM</p> <p>22 him direction on that and asked him to 04:25:54PM</p> <p>23 fill in and draft some sections of the 04:25:58PM</p> <p>24 report. He would then do that and send it 04:26:03PM</p> <p>25 to me, and I would then edit it and mark 04:26:05PM</p>                                                                                  |
| Page 351                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 353                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 response to my request. And then in 04:24:26PM</p> <p>3 addition -- 04:24:29PM</p> <p>4 Q. Could I just stop you there, 04:24:30PM</p> <p>5 I'm sorry. 04:24:31PM</p> <p>6 A. Sure. 04:24:31PM</p> <p>7 Q. Mr. Sinha and others at 04:24:32PM</p> <p>8 Cornerstone did the empirical portion of 04:24:35PM</p> <p>9 the regression analysis that formed the 04:24:38PM</p> <p>10 basis for your opinions; is that correct? 04:24:41PM</p> <p>11 A. I wouldn't say they did it. I 04:24:42PM</p> <p>12 mean, it was my regression. I told them 04:24:44PM</p> <p>13 how I wanted to approach it and they would 04:24:47PM</p> <p>14 do work and share it with me, and as in 04:24:50PM</p> <p>15 all empirical work, I mean, it happens at 04:24:56PM</p> <p>16 the university as well, you refine the 04:24:58PM</p> <p>17 work and then ultimately you are satisfied 04:25:00PM</p> <p>18 with the final results and you are ready 04:25:04PM</p> <p>19 to start writing the results up. 04:25:06PM</p> <p>20 Q. And those individuals were 04:25:08PM</p> <p>21 being -- they worked at Cornerstone and 04:25:09PM</p> <p>22 Cornerstone was billing the defendants for 04:25:12PM</p> <p>23 that work; is that your understanding? 04:25:15PM</p> <p>24 A. Again, I presume they were, but 04:25:17PM</p> <p>25 I don't have any firsthand knowledge as to 04:25:20PM</p>                                                | <p>1 LEHN - CONFIDENTIAL</p> <p>2 it up and put in placeholders and requests 04:26:09PM</p> <p>3 and send it back, and then ultimately that 04:26:13PM</p> <p>4 resulted in the final report which is my 04:26:15PM</p> <p>5 report. But he did assistance on drafting 04:26:18PM</p> <p>6 as well. 04:26:21PM</p> <p>7 Q. And what about Mr. Garrett? 04:26:22PM</p> <p>8 A. Mr. Garrett basically did a lot 04:26:24PM</p> <p>9 of what Mr. Sinha did. He was on several 04:26:30PM</p> <p>10 of the phone calls, and when I would be 04:26:36PM</p> <p>11 indicating the type of work that I would 04:26:41PM</p> <p>12 like to be done, he was on that call. 04:26:42PM</p> <p>13 So I presume that he also 04:26:44PM</p> <p>14 managed some of the work in Cornerstone on 04:26:46PM</p> <p>15 this matter. I don't recall whether he 04:26:50PM</p> <p>16 did any drafting of sections of the 04:26:52PM</p> <p>17 report. He might have. But I don't have 04:26:56PM</p> <p>18 firsthand knowledge of that. 04:26:58PM</p> <p>19 Q. Who prepared the initial draft 04:26:59PM</p> <p>20 of your original report? 04:27:01PM</p> <p>21 A. I did. 04:27:02PM</p> <p>22 Q. And then you -- did you 04:27:02PM</p> <p>23 circulate it for comment? 04:27:05PM</p> <p>24 A. I did, with placeholders, and, 04:27:06PM</p> <p>25 you know, type of work that needed to be 04:27:08PM</p> |

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| Page 354                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 356                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 done at Cornerstone's end based on the 04:27:11PM</p> <p>3 calls that we had. 04:27:15PM</p> <p>4 Q. And did you circulate it to 04:27:16PM</p> <p>5 counsel for defense? 04:27:17PM</p> <p>6 A. I don't think initially. I 04:27:18PM</p> <p>7 think it was much further along before I 04:27:19PM</p> <p>8 circulated it to counsel. 04:27:21PM</p> <p>9 Q. And who did you circulate it to 04:27:22PM</p> <p>10 at counsel for defense? 04:27:24PM</p> <p>11 A. I think it was Joshua Weiss at 04:27:25PM</p> <p>12 Cadwalader. 04:27:32PM</p> <p>13 Q. And did he provide you 04:27:33PM</p> <p>14 comments? 04:27:35PM</p> <p>15 A. Yes. I think they were oral 04:27:35PM</p> <p>16 comments. I remember at least one. There 04:27:37PM</p> <p>17 probably were more than one phone calls, 04:27:41PM</p> <p>18 there weren't that many, but maybe two or 04:27:44PM</p> <p>19 three calls where he provided comments on 04:27:46PM</p> <p>20 the phone. 04:27:49PM</p> <p>21 Q. And did you input some of 04:27:49PM</p> <p>22 defense counsel's comments? 04:27:51PM</p> <p>23 A. Not anything -- with all due 04:27:52PM</p> <p>24 respect to Mr. Weiss, nothing of 04:27:56PM</p> <p>25 substance, but if there were some factual 04:28:00PM</p>                                                                                                                    | <p>1 LEHN - CONFIDENTIAL</p> <p>2 context of the allegations. 04:29:09PM</p> <p>3 Q. And what about the rebuttal 04:29:10PM</p> <p>4 report, who drafted the first draft of 04:29:12PM</p> <p>5 that? 04:29:14PM</p> <p>6 A. I did as well. 04:29:14PM</p> <p>7 Q. And then you circulated it to 04:29:15PM</p> <p>8 Cornerstone first? 04:29:16PM</p> <p>9 A. Correct. 04:29:17PM</p> <p>10 Q. And then got commentary from 04:29:18PM</p> <p>11 Cornerstone? 04:29:21PM</p> <p>12 A. Correct. 04:29:21PM</p> <p>13 Q. And you incorporated some of 04:29:21PM</p> <p>14 it? 04:29:23PM</p> <p>15 A. Not only commentary, you know, 04:29:23PM</p> <p>16 but there would be placeholders and 04:29:25PM</p> <p>17 requests for information, and they would 04:29:27PM</p> <p>18 furnish that and then send it back and I 04:29:28PM</p> <p>19 would mark it up and write more and send 04:29:31PM</p> <p>20 it back maybe with more placeholders and 04:29:34PM</p> <p>21 more requests. 04:29:37PM</p> <p>22 Q. Is it fair to say that they 04:29:37PM</p> <p>23 did -- and I forget the word you used -- a 04:29:39PM</p> <p>24 lot of the empirical work in both reports, 04:29:41PM</p> <p>25 the mathematical work? 04:29:44PM</p>                                              |
| Page 355                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 357                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 errors that I made, or, you know, just 04:28:03PM</p> <p>3 wording type issues, my recollection is 04:28:07PM</p> <p>4 that I did incorporate some of those. 04:28:10PM</p> <p>5 Q. Did your engagement or the 04:28:12PM</p> <p>6 objectives of your engagement change at 04:28:16PM</p> <p>7 any point over the last -- since, say, 04:28:18PM</p> <p>8 2010? 04:28:22PM</p> <p>9 MR. WANG: Objection, vague. 04:28:27PM</p> <p>10 Q. Did they ask you for certain 04:28:28PM</p> <p>11 opinions and then asked to have you 04:28:31PM</p> <p>12 comment on other opinions at a later 04:28:35PM</p> <p>13 point? Just describe how the engagement 04:28:36PM</p> <p>14 changed. 04:28:38PM</p> <p>15 A. It was pretty clear-cut from 04:28:39PM</p> <p>16 the outset, as I recall, that counsel was 04:28:41PM</p> <p>17 interested in my opinions regarding 04:28:44PM</p> <p>18 materiality and loss causation, and by 04:28:48PM</p> <p>19 implication whether there was artificial 04:28:51PM</p> <p>20 inflation in Pharmacia's stock price 04:28:54PM</p> <p>21 because of the alleged misrepresentations. 04:28:56PM</p> <p>22 And I think from the outset of 04:28:58PM</p> <p>23 this assignment there was interest in any 04:28:59PM</p> <p>24 opinion I would offer with regard to 04:29:04PM</p> <p>25 Ms. Cox and Dr. Geis' stock sales in the 04:29:07PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 MR. WANG: Objection. 04:29:45PM</p> <p>3 A. I wouldn't say they did it, I 04:29:46PM</p> <p>4 think the accurate way to portray it is 04:29:49PM</p> <p>5 that I did it. I mean, they executed 04:29:51PM</p> <p>6 under my direction, but, you know, the 04:29:54PM</p> <p>7 empirical work was work that I wanted done 04:29:54PM</p> <p>8 because it formed the bases of my 04:29:59PM</p> <p>9 opinions. 04:30:01PM</p> <p>10 Q. And do you have an 04:30:01PM</p> <p>11 approximation of how many hours Mr. Sinha 04:30:02PM</p> <p>12 and Mr. Garrett spent in preparation of 04:30:05PM</p> <p>13 the two reports? 04:30:07PM</p> <p>14 A. I have no idea. 04:30:07PM</p> <p>15 Q. Do you think it was more or 04:30:11PM</p> <p>16 less than the amount of hours you spent? 04:30:13PM</p> <p>17 A. I wouldn't even hazard a guess. 04:30:15PM</p> <p>18 Q. And how many hours did you 04:30:17PM</p> <p>19 prepare -- spend in preparing for the 04:30:19PM</p> <p>20 deposition today? 04:30:21PM</p> <p>21 A. I would say probably 30 to 40 04:30:22PM</p> <p>22 hours. 04:30:32PM</p> <p>23 Q. And how much time did you spend 04:30:32PM</p> <p>24 with counsel? 04:30:34PM</p> <p>25 A. Probably about a day, a little 04:30:35PM</p> |

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| <p style="text-align: right;">Page 358</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 more than a day and a half. 04:30:46PM</p> <p>3 Q. On how many occasions? 04:30:47PM</p> <p>4 A. On two separate occasions, 04:30:48PM</p> <p>5 Monday of this week for about maybe four 04:30:53PM</p> <p>6 or five hours and then Wednesday of this 04:30:55PM</p> <p>7 week for six, seven hours, something like 04:30:58PM</p> <p>8 that. 04:31:02PM</p> <p>9 Q. And who did you meet with? 04:31:02PM</p> <p>10 A. I met with Mr. Wang and Michael 04:31:04PM</p> <p>11 and Shannon and John Dougherty, and I 04:31:09PM</p> <p>12 think very, very briefly with Wang in 04:31:15PM</p> <p>13 here. And then Ravi Sinha from 04:31:19PM</p> <p>14 Cornerstone was here for the Monday and 04:31:21PM</p> <p>15 Wednesday meetings. 04:31:23PM</p> <p>16 Q. And Mr. Sinha, he attended 04:31:25PM</p> <p>17 Dr. Feinstein's deposition; is that 04:31:27PM</p> <p>18 correct? 04:31:29PM</p> <p>19 A. I believe so, yes. 04:31:29PM</p> <p>20 MR. WANG: Unless you are 04:31:37PM</p> <p>21 finishing up soon, can we take a break? 04:31:38PM</p> <p>22 MR. SAHAM: Sure. We are 04:31:41PM</p> <p>23 closing in on the end, but we can take a 04:31:42PM</p> <p>24 break. 04:31:45PM</p> <p>25 THE VIDEOGRAPHER: The time is 04:31:45PM</p>  | <p style="text-align: right;">Page 360</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 interested in having me form an opinion 04:42:44PM</p> <p>3 with respect to materiality, and by 04:42:46PM</p> <p>4 implication whether Pharmacia's stock 04:42:49PM</p> <p>5 price was artificially inflated by the 04:42:52PM</p> <p>6 alleged misrepresentations, loss 04:42:55PM</p> <p>7 causation, and then finally the issue of 04:42:58PM</p> <p>8 Ms. Cox and Dr. Geis' stock sales in the 04:43:02PM</p> <p>9 context of the allegations. 04:43:06PM</p> <p>10 Q. And why did you provide the 04:43:07PM</p> <p>11 opinion as opposed to just saying that the 04:43:08PM</p> <p>12 stock wasn't inflated during the class 04:43:10PM</p> <p>13 period, why did you offer the additional 04:43:12PM</p> <p>14 opinion about their insider sales? Like 04:43:14PM</p> <p>15 what's added -- your opinion is just that 04:43:17PM</p> <p>16 the stock price wasn't inflated, correct? 04:43:18PM</p> <p>17 MR. WANG: Objection. 04:43:21PM</p> <p>18 A. Well, it is not just that, 04:43:22PM</p> <p>19 because the opinion with respect to their 04:43:25PM</p> <p>20 stock sales is a separate standalone 04:43:27PM</p> <p>21 opinion and may be related to the opinion 04:43:31PM</p> <p>22 as to artificial inflation or the absence 04:43:33PM</p> <p>23 of artificial inflation. But they did ask 04:43:34PM</p> <p>24 me to form an opinion with respect to 04:43:39PM</p> <p>25 their stock sales and I did. 04:43:41PM</p> |
| <p style="text-align: right;">Page 359</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 approximately 4:31 p.m. This is the end 04:31:46PM</p> <p>3 of media number five. We are off the 04:31:49PM</p> <p>4 record. 04:31:51PM</p> <p>5 (Recess taken.) 04:31:51PM</p> <p>6 THE VIDEOGRAPHER: The time is 04:41:51PM</p> <p>7 approximately 4:41 p.m. This is the 04:42:00PM</p> <p>8 beginning of media number six. We are on 04:42:02PM</p> <p>9 the record. 04:42:05PM</p> <p>10 BY MR. SAHAM: 04:42:05PM</p> <p>11 Q. Dr. Lehn, who described your 04:42:05PM</p> <p>12 assignment initially in this case? 04:42:07PM</p> <p>13 MR. WANG: Objection, vague. 04:42:11PM</p> <p>14 A. My recollection is that it was 04:42:16PM</p> <p>15 counsel for the defendants as of the time 04:42:18PM</p> <p>16 that I was engaged in this matter. 04:42:20PM</p> <p>17 Q. And who specifically do you 04:42:23PM</p> <p>18 recall giving you the assignment? 04:42:25PM</p> <p>19 A. I believe it was -- I think it 04:42:26PM</p> <p>20 was Jonathan Hoff and Joshua Weiss at 04:42:30PM</p> <p>21 Cadwalader. 04:42:35PM</p> <p>22 Q. And what did they communicate 04:42:36PM</p> <p>23 the assignment was? 04:42:37PM</p> <p>24 A. Well, basically as I described 04:42:38PM</p> <p>25 in the report, which was they were 04:42:41PM</p> | <p style="text-align: right;">Page 361</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. But you don't have any basis 04:43:42PM</p> <p>3 for that opinion other than your analysis 04:43:44PM</p> <p>4 and conclusions and opinions that the 04:43:47PM</p> <p>5 stock price wasn't inflated during the 04:43:48PM</p> <p>6 class period, correct? 04:43:50PM</p> <p>7 A. There is no other analysis that 04:43:51PM</p> <p>8 I conducted, that's correct. 04:43:53PM</p> <p>9 Q. Now, looking at your curriculum 04:43:56PM</p> <p>10 vitae, which is Exhibit 1 to Exhibit 500, 04:43:59PM</p> <p>11 is there any additional testimony or 04:44:03PM</p> <p>12 reports that you have written subsequent 04:44:06PM</p> <p>13 to the compilation of your CV in Exhibit 1 04:44:08PM</p> <p>14 with respect to the initial report? 04:44:14PM</p> <p>15 A. I'm sorry, you are looking at 04:44:17PM</p> <p>16 the initial report? 04:44:19PM</p> <p>17 Q. Yes, I'm looking at the initial 04:44:20PM</p> <p>18 report, 500, the initial report. 04:44:22PM</p> <p>19 A. I did attach a CV to the 04:44:24PM</p> <p>20 rebuttal report and I know there was at 04:44:26PM</p> <p>21 least one additional testimony on that CV. 04:44:28PM</p> <p>22 Q. So is the rebuttal report up to 04:44:30PM</p> <p>23 date? Is there anything that's not on 04:44:32PM</p> <p>24 the, you know, initial report CV and the 04:44:34PM</p> <p>25 rebuttal report CV that would be 04:44:36PM</p>                                               |

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| Page 362                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 364                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 responsive to the requirements of the 04:44:39PM</p> <p>3 federal rules of testimony and reports 04:44:40PM</p> <p>4 issued in the last four years? 04:44:42PM</p> <p>5 MR. WANG: Objection. 04:44:45PM</p> <p>6 A. I don't think so. I mean, 04:44:46PM</p> <p>7 certainly the CV was up to date as of the 04:44:49PM</p> <p>8 time I submitted the rebuttal report in 04:44:53PM</p> <p>9 July, and as I sit here I can't think of 04:44:56PM</p> <p>10 any testimony I've given since that time. 04:45:00PM</p> <p>11 Q. In looking at page 7 of the CV, 04:45:04PM</p> <p>12 Exhibit 1 to the opening report, the 04:45:08PM</p> <p>13 testimony and expert witness in the last 04:45:09PM</p> <p>14 four years, Securities and Exchange 04:45:11PM</p> <p>15 Commission versus Angelo Mozilo and David 04:45:14PM</p> <p>16 Sambol and the other Countrywide folks, 04:45:18PM</p> <p>17 who were you retained for in that case? 04:45:20PM</p> <p>18 A. I was retained by counsel for 04:45:22PM</p> <p>19 Mr. Mozilo, and I believe that the 04:45:25PM</p> <p>20 codefendants also had some representation 04:45:34PM</p> <p>21 in some of the meetings, but I was 04:45:40PM</p> <p>22 officially retained by counsel for 04:45:42PM</p> <p>23 Mr. Mozilo. 04:45:43PM</p> <p>24 Q. And what opinions did you offer 04:45:44PM</p> <p>25 on behalf of Mr. Mozilo? 04:45:45PM</p>    | <p>1 LEHN - CONFIDENTIAL</p> <p>2 did not trade on the basis of inside 04:47:02PM</p> <p>3 information, there were several features 04:47:04PM</p> <p>4 of his trading that was inconsistent with 04:47:08PM</p> <p>5 the SEC's allegations. 04:47:12PM</p> <p>6 Q. So did you form an opinion on 04:47:16PM</p> <p>7 whether Mr. Mozilo traded based on inside 04:47:18PM</p> <p>8 information? 04:47:21PM</p> <p>9 A. Well, I think I stopped short 04:47:21PM</p> <p>10 of that on grounds that I didn't know what 04:47:23PM</p> <p>11 the basis of his trading was, but I was 04:47:27PM</p> <p>12 able to observe based on his trading 04:47:30PM</p> <p>13 behavior whether his trading behavior was 04:47:32PM</p> <p>14 consistent with what one would expect if 04:47:34PM</p> <p>15 one was trading on the basis of inside 04:47:37PM</p> <p>16 information. 04:47:39PM</p> <p>17 Q. So was that opinion offered by 04:47:39PM</p> <p>18 Mr. Mozilo in his defense? 04:47:42PM</p> <p>19 A. I'm sorry? 04:47:44PM</p> <p>20 Q. The opinion, your opinion that 04:47:45PM</p> <p>21 you just described, was that offered by 04:47:47PM</p> <p>22 Mr. Mozilo's attorney in his defense to 04:47:49PM</p> <p>23 allegations levied by the SEC that he 04:47:51PM</p> <p>24 unlawfully traded based on inside 04:47:55PM</p> <p>25 nonpublic information? 04:47:58PM</p> |
| Page 363                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 365                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. It has been more than a year 04:45:47PM</p> <p>3 since I really thought about that case, 04:45:55PM</p> <p>4 but my recollection is that the SEC was 04:45:57PM</p> <p>5 alleging misrepresentations concerning the 04:46:03PM</p> <p>6 risk of certain products that Countrywide 04:46:05PM</p> <p>7 was originating and selling, and I was 04:46:09PM</p> <p>8 asked, as I recall, to form opinion as to 04:46:14PM</p> <p>9 whether or not those alleged 04:46:17PM</p> <p>10 misrepresentations were material, and then 04:46:18PM</p> <p>11 the SEC, as I recall, also was alleging 04:46:22PM</p> <p>12 that Mr. Mozilo engaged in insider selling 04:46:25PM</p> <p>13 in violation of the U.S. securities laws. 04:46:31PM</p> <p>14 And I was asked to analyze his 04:46:34PM</p> <p>15 trading behavior and form an opinion as to 04:46:37PM</p> <p>16 whether that was consistent or not 04:46:41PM</p> <p>17 consistent with the allegations that the 04:46:43PM</p> <p>18 SEC had made. 04:46:47PM</p> <p>19 Q. And did you form such an 04:46:48PM</p> <p>20 opinion? 04:46:49PM</p> <p>21 A. My recollection is that I did. 04:46:49PM</p> <p>22 Q. And what was that opinion? 04:46:51PM</p> <p>23 A. This is where the words can be 04:46:53PM</p> <p>24 important. My recollection is that 04:46:57PM</p> <p>25 without opining as to whether he did or 04:47:00PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Again, not being a lawyer, I'm 04:48:00PM</p> <p>3 not sure what constitutes "offered," but 04:48:01PM</p> <p>4 certainly my report was filed and I had a 04:48:05PM</p> <p>5 deposition and it was scheduled to go to 04:48:08PM</p> <p>6 trial I believe last October and I was 04:48:11PM</p> <p>7 prepared to testify accordingly, and then 04:48:15PM</p> <p>8 the case settled. 04:48:17PM</p> <p>9 Q. And it settled because -- and 04:48:18PM</p> <p>10 Mr. Mozilo paid a significant fine as a 04:48:21PM</p> <p>11 result of the settlement? 04:48:24PM</p> <p>12 A. I frankly don't remember what 04:48:25PM</p> <p>13 the fine was. 04:48:27PM</p> <p>14 Q. It was in the millions of 04:48:28PM</p> <p>15 dollars, though, correct? 04:48:30PM</p> <p>16 A. I just don't recall. 04:48:31PM</p> <p>17 Q. And you testified -- you were 04:48:34PM</p> <p>18 deposed by lawyers from the SEC? 04:48:38PM</p> <p>19 A. Correct. 04:48:40PM</p> <p>20 Q. Now, on the next page of your 04:48:40PM</p> <p>21 CV, page 8, the DVI Securities litigation, 04:48:54PM</p> <p>22 you provided deposition testimony? 04:48:58PM</p> <p>23 A. That's correct. 04:49:01PM</p> <p>24 Q. In 2009? 04:49:02PM</p> <p>25 A. Correct. 04:49:03PM</p>                                                                                          |

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| <p style="text-align: right;">Page 366</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And was that on behalf of the 04:49:03PM</p> <p>3 defendants? 04:49:05PM</p> <p>4 A. It was, or at least a 04:49:05PM</p> <p>5 defendant. I forget whether there were 04:49:08PM</p> <p>6 codefendants. 04:49:10PM</p> <p>7 Q. And do you recall that that 04:49:10PM</p> <p>8 case made its way up to the appellate 04:49:11PM</p> <p>9 courts and there was an opinion issued by 04:49:13PM</p> <p>10 the Third Circuit Court of Appeals in the 04:49:15PM</p> <p>11 DVI case? 04:49:17PM</p> <p>12 A. I do. 04:49:18PM</p> <p>13 Q. And do you recall that the 04:49:19PM</p> <p>14 Third Circuit accepted a two-day window in 04:49:21PM</p> <p>15 that case? 04:49:23PM</p> <p>16 MR. WANG: Objection. 04:49:24PM</p> <p>17 A. I would have to go back and 04:49:25PM</p> <p>18 look at the precise language. I 04:49:26PM</p> <p>19 believe -- my recollection is there was 04:49:31PM</p> <p>20 reference to the fact that most of the 04:49:32PM</p> <p>21 time information is fully reflected within 04:49:33PM</p> <p>22 one trading day and made reference to 04:49:37PM</p> <p>23 sometimes it can take two days, or words 04:49:44PM</p> <p>24 to that effect. 04:49:47PM</p> <p>25 Q. And did you issue an opinion in 04:49:48PM</p>                               | <p style="text-align: right;">Page 368</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 opinion in the DVI matter. 04:50:38PM</p> <p>3 Q. And in DVI the court found that 04:50:40PM</p> <p>4 the stock price sometimes took up to two 04:50:44PM</p> <p>5 days to incorporate new information; is 04:50:46PM</p> <p>6 that correct? 04:50:49PM</p> <p>7 MR. WANG: Objection. 04:50:49PM</p> <p>8 A. That's my recollection. 04:50:50PM</p> <p>9 Q. So the court rejected your 04:50:52PM</p> <p>10 application of strictly a one-day event 04:50:55PM</p> <p>11 window; is that correct, sir? 04:50:58PM</p> <p>12 MR. WANG: Objection. 04:50:59PM</p> <p>13 A. I don't know if they rejected 04:51:00PM</p> <p>14 it. I don't know if they cited it and 04:51:02PM</p> <p>15 said we reject what Professor Lehn has 04:51:04PM</p> <p>16 said. I don't recall ever seeing that. 04:51:06PM</p> <p>17 Q. In the Apollo Securities 04:51:10PM</p> <p>18 Litigation, you offered testimony on 04:51:12PM</p> <p>19 behalf of the defendants at trial; is that 04:51:14PM</p> <p>20 correct? 04:51:14PM</p> <p>21 A. I'm sorry, which one? 04:51:14PM</p> <p>22 Q. The Apollo Securities 04:51:14PM</p> <p>23 Litigation on page 9. In January 2008, 04:51:19PM</p> <p>24 did you offer trial testimony? 04:51:21PM</p> <p>25 A. I did. 04:51:22PM</p>                                                                                                                                |
| <p style="text-align: right;">Page 367</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 that case? 04:49:49PM</p> <p>3 A. I did. I submitted a report in 04:49:49PM</p> <p>4 that case. 04:49:51PM</p> <p>5 Q. And did you provide testimony 04:49:52PM</p> <p>6 or an opinion as to whether -- what the 04:49:55PM</p> <p>7 appropriate window length was that a court 04:49:58PM</p> <p>8 should view in a securities litigation 04:50:01PM</p> <p>9 context? 04:50:04PM</p> <p>10 MR. WANG: Objection, vague. 04:50:06PM</p> <p>11 A. It was a loss causation case. 04:50:07PM</p> <p>12 So I presume that I did, but as I sit 04:50:13PM</p> <p>13 here, I can't recall precisely whether I 04:50:15PM</p> <p>14 did. 04:50:17PM</p> <p>15 Q. And do you recall that you said 04:50:17PM</p> <p>16 that the appropriate window length was a 04:50:18PM</p> <p>17 one-day window, a one-day event window, 04:50:20PM</p> <p>18 similar to what you proffered in this 04:50:24PM</p> <p>19 case? 04:50:25PM</p> <p>20 A. I didn't remember that 04:50:25PM</p> <p>21 precisely. But as I indicated before, 04:50:27PM</p> <p>22 depending on the facts and circumstances 04:50:30PM</p> <p>23 of the case, the window could be one day 04:50:31PM</p> <p>24 or it might be more than one day. It 04:50:33PM</p> <p>25 doesn't surprise me that that was my 04:50:36PM</p> | <p style="text-align: right;">Page 369</p> <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And Professor Feinstein, 04:51:22PM</p> <p>3 interestingly, was on the other side of 04:51:25PM</p> <p>4 that case? 04:51:26PM</p> <p>5 A. That's correct. 04:51:26PM</p> <p>6 Q. And Professor Feinstein offered 04:51:27PM</p> <p>7 a multi-day event window analysis; is that 04:51:29PM</p> <p>8 correct? 04:51:34PM</p> <p>9 A. Again, it has been a while 04:51:34PM</p> <p>10 since I have thought about that case. My 04:51:37PM</p> <p>11 recollection is that he and I agreed on 04:51:38PM</p> <p>12 the alleged corrective disclosure dates as 04:51:48PM</p> <p>13 identified by the plaintiffs, and, as I 04:51:50PM</p> <p>14 indicated before, my recollection is that 04:51:54PM</p> <p>15 there were two alleged corrective 04:51:55PM</p> <p>16 disclosure dates I think on consecutive 04:51:57PM</p> <p>17 days, roughly, and we both looked at that 04:52:00PM</p> <p>18 and we both treated those as corrective 04:52:03PM</p> <p>19 disclosures I think over a two-day window, 04:52:07PM</p> <p>20 but there were two separate disclosures. 04:52:10PM</p> <p>21 He then proceeded, as I recall 04:52:13PM</p> <p>22 in that case, to look at an analyst 04:52:15PM</p> <p>23 report, I think it was six trading days 04:52:17PM</p> <p>24 later, and use that as effectively as a 04:52:20PM</p> <p>25 corrective disclosure as well. So he and 04:52:24PM</p> |

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| Page 370                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 372                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 I had disagreement about the length of the 04:52:26PM</p> <p>3 event window in that matter. 04:52:29PM</p> <p>4 Q. And you both testified before 04:52:30PM</p> <p>5 in the jury trial? 04:52:32PM</p> <p>6 A. We did. 04:52:33PM</p> <p>7 Q. And ultimately the jury found 04:52:33PM</p> <p>8 for the plaintiffs? 04:52:35PM</p> <p>9 A. I believe so. But I believe it 04:52:36PM</p> <p>10 was reversed by the judge. 04:52:37PM</p> <p>11 Q. And then ultimately it was 04:52:39PM</p> <p>12 appealed to the Ninth Circuit Court of 04:52:40PM</p> <p>13 Appeals; is that correct? 04:52:42PM</p> <p>14 A. Correct. 04:52:43PM</p> <p>15 Q. And the judge's overturning of 04:52:43PM</p> <p>16 the jury's finding was itself overturned 04:52:47PM</p> <p>17 by the appellate court? 04:52:52PM</p> <p>18 A. I'm not a lawyer, so I haven't 04:52:53PM</p> <p>19 kept track of the state of that 04:52:55PM</p> <p>20 litigation. 04:52:56PM</p> <p>21 Q. Do you understand that the 04:52:57PM</p> <p>22 judge's overturning of the jury verdict 04:52:58PM</p> <p>23 was reversed by the Ninth Circuit? 04:53:01PM</p> <p>24 A. I may have been told. It 04:53:04PM</p> <p>25 doesn't register with me. 04:53:05PM</p>                                                                                                                                | <p>1 LEHN - CONFIDENTIAL</p> <p>2 without refreshing my memory and looking 04:54:09PM</p> <p>3 at cases what I would have advised in 04:54:12PM</p> <p>4 those matters. 04:54:18PM</p> <p>5 As I have indicated before, 04:54:19PM</p> <p>6 depending on the facts and circumstances 04:54:20PM</p> <p>7 of a particular case, a multi-day window 04:54:22PM</p> <p>8 might very well be appropriate. So there 04:54:26PM</p> <p>9 is no dogma that one should never use a 04:54:28PM</p> <p>10 multi-day window. 04:54:31PM</p> <p>11 But in this matter where one 04:54:34PM</p> <p>12 has formed the opinion that the market for 04:54:36PM</p> <p>13 the security is efficient and there's a 04:54:38PM</p> <p>14 date on which the alleged corrective 04:54:42PM</p> <p>15 disclosure occurs with no subsequent 04:54:43PM</p> <p>16 additional corrective disclosure, which 04:54:47PM</p> <p>17 Dr. Feinstein and I agree on, there is no 04:54:49PM</p> <p>18 basis for using a multiple-day window. 04:54:51PM</p> <p>19 Q. Now, can we take a look at 04:54:56PM</p> <p>20 Exhibit 3 of your opening report. I think 04:54:58PM</p> <p>21 that was the label you were talking about 04:55:01PM</p> <p>22 earlier. 04:55:02PM</p> <p>23 And why did you think it was 04:55:09PM</p> <p>24 important to put this version with the 04:55:11PM</p> <p>25 label changes in it as an exhibit to your 04:55:14PM</p> |
| Page 371                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 373                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. Did you testify in some form in 04:53:08PM</p> <p>3 the Cardinal Health Securities Litigation? 04:53:10PM</p> <p>4 A. I did. That was a mediation 04:53:14PM</p> <p>5 hearing. 04:53:16PM</p> <p>6 Q. And who were you retained by? 04:53:16PM</p> <p>7 A. My recollection is by Cardinal 04:53:18PM</p> <p>8 Health. 04:53:21PM</p> <p>9 Q. In looking at -- just in an 04:53:22PM</p> <p>10 attempt to refresh your recollection, 04:53:24PM</p> <p>11 looking at pages 7, 8 and 9 of your CV 04:53:26PM</p> <p>12 which is Exhibit 1 to the opening report, 04:53:37PM</p> <p>13 are there any of these other cases that we 04:53:40PM</p> <p>14 haven't discussed where you opine that a 04:53:42PM</p> <p>15 multiple-day window was appropriate by 04:53:44PM</p> <p>16 looking at -- you know, going through 04:53:47PM</p> <p>17 there, and we can go through them with 04:53:49PM</p> <p>18 you, but if you just want to identify 04:53:50PM</p> <p>19 anywhere you provided testimony that a 04:53:53PM</p> <p>20 multiple-day window was appropriate. 04:53:55PM</p> <p>21 The first one is the Lisa Berry 04:53:57PM</p> <p>22 matter. Would you have used a 04:54:01PM</p> <p>23 multiple-day window there? 04:54:02PM</p> <p>24 A. You know, I am not going to be 04:54:03PM</p> <p>25 able to recall on a case by case basis 04:54:05PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 report? How does it support your 04:55:17PM</p> <p>3 opinions? 04:55:19PM</p> <p>4 A. Well, it is simply descriptive 04:55:19PM</p> <p>5 information that indicates that there was 04:55:24PM</p> <p>6 a label change, and it is simply 04:55:26PM</p> <p>7 highlighting the differences between the 04:55:29PM</p> <p>8 old label and the new label. 04:55:30PM</p> <p>9 Q. Does it form a basis for any of 04:55:32PM</p> <p>10 your loss causation or materiality 04:55:34PM</p> <p>11 opinions? 04:55:35PM</p> <p>12 A. No. It is just additional 04:55:37PM</p> <p>13 context, but it is not -- I would reach my 04:55:41PM</p> <p>14 opinion regardless of whether or not 04:55:44PM</p> <p>15 Exhibit 3 was in the report. 04:55:46PM</p> <p>16 Q. So is it fair to say it is not 04:55:47PM</p> <p>17 directly relevant to your opinions? 04:55:49PM</p> <p>18 A. It certainly doesn't affect my 04:55:53PM</p> <p>19 opinions regarding materiality and loss 04:56:00PM</p> <p>20 causation, but it is additional factual 04:56:03PM</p> <p>21 information which may or may not be 04:56:06PM</p> <p>22 relevant depending upon statements that 04:56:11PM</p> <p>23 Dr. Feinstein may make at trial. 04:56:14PM</p> <p>24 Q. And when you look through here, 04:56:20PM</p> <p>25 are there any p-values from CLASS that are 04:56:25PM</p>                                 |

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| Page 374                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 376                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 contained in Exhibit 3, the revised label 04:56:28PM</p> <p>3 from June 7th, 2002? 04:56:32PM</p> <p>4 A. I don't see any as I sit here, 04:56:49PM</p> <p>5 no. 04:56:53PM</p> <p>6 Q. And do you know why there isn't 04:56:53PM</p> <p>7 any p-values? 04:56:55PM</p> <p>8 A. No. 04:56:55PM</p> <p>9 Q. You are not offering an opinion 04:56:57PM</p> <p>10 as to the reason there is no p-values in 04:56:58PM</p> <p>11 there? 04:57:01PM</p> <p>12 A. I'm certainly not offering an 04:57:02PM</p> <p>13 opinion as to that. 04:57:03PM</p> <p>14 Q. And that would be outside your 04:57:04PM</p> <p>15 expertise? 04:57:06PM</p> <p>16 A. Well, when you say "opinion," 04:57:06PM</p> <p>17 it would seem to be potentially a factual 04:57:11PM</p> <p>18 issue as to why there are no p-values as 04:57:15PM</p> <p>19 opposed to an opinion, and it may be in 04:57:17PM</p> <p>20 the course of preparing for a trial I will 04:57:20PM</p> <p>21 learn such information. But I wouldn't 04:57:22PM</p> <p>22 categorize it as an opinion. 04:57:24PM</p> <p>23 Q. And as we sit here today, you 04:57:25PM</p> <p>24 haven't learned that information yet, 04:57:28PM</p> <p>25 correct? 04:57:29PM</p>                                                                                                                                                        | <p>1 LEHN - CONFIDENTIAL</p> <p>2 opinion as to the -- and I'm probably 04:59:08PM</p> <p>3 going to use the wrong word, so you can 04:59:10PM</p> <p>4 correct me -- as to the duration and 04:59:13PM</p> <p>5 placement of the event window that's 04:59:17PM</p> <p>6 appropriate to use to analyze this case; 04:59:19PM</p> <p>7 is that correct? 04:59:22PM</p> <p>8 A. I think what you are referring 04:59:23PM</p> <p>9 to, if you are referring to letter B on 04:59:25PM</p> <p>10 page 5, is the estimation period -- 04:59:28PM</p> <p>11 Q. That's it, the estimation 04:59:31PM</p> <p>12 period, that's what I was looking for. 04:59:33PM</p> <p>13 So you and Dr. Feinstein have a 04:59:35PM</p> <p>14 disagreement about what the appropriate 04:59:36PM</p> <p>15 estimation period is; is that correct? 04:59:38PM</p> <p>16 A. We do. 04:59:40PM</p> <p>17 Q. And what's the estimation 04:59:41PM</p> <p>18 period that you chose? 04:59:42PM</p> <p>19 A. I use the class period of April 04:59:43PM</p> <p>20 17th, 2000 through August 5th, 2001. 04:59:46PM</p> <p>21 Q. And do you always use the class 04:59:49PM</p> <p>22 period in formulating your estimation 04:59:51PM</p> <p>23 period in these types of cases? 04:59:53PM</p> <p>24 A. Not always. It is usually the 04:59:55PM</p> <p>25 case. But, again, it depends on the facts 04:59:58PM</p>                                                                                  |
| Page 375                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 377                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. That's correct. 04:57:30PM</p> <p>3 Q. Could you take a look at 04:57:31PM</p> <p>4 Exhibit 516, your rebuttal report. 04:57:34PM</p> <p>5 And as of the date of your 04:58:02PM</p> <p>6 signing of this rebuttal report, the 04:58:04PM</p> <p>7 rebuttal report and the opening report 04:58:06PM</p> <p>8 contained all the opinions that you plan 04:58:09PM</p> <p>9 to offer in this case? 04:58:12PM</p> <p>10 A. Well, again, with two caveats. 04:58:15PM</p> <p>11 One is that subsequent to filing the 04:58:17PM</p> <p>12 rebuttal report, Dr. Feinstein has been 04:58:21PM</p> <p>13 deposed, and it may be that upon closer 04:58:26PM</p> <p>14 inspection of his deposition testimony I 04:58:30PM</p> <p>15 will have additional opinions about his 04:58:34PM</p> <p>16 analysis. And then, similarly, depending 04:58:36PM</p> <p>17 upon what he testifies to at trial, there 04:58:40PM</p> <p>18 may be some additional opinions. 04:58:43PM</p> <p>19 And then, I guess, finally, if 04:58:46PM</p> <p>20 counsel does ask me to form additional 04:58:47PM</p> <p>21 opinions, then I would certainly consider 04:58:50PM</p> <p>22 doing that. 04:58:52PM</p> <p>23 Q. Looking at page 5 of your 04:58:55PM</p> <p>24 rebuttal report, letter B of paragraph 14, 04:58:58PM</p> <p>25 you and Dr. Feinstein have a difference of 04:59:06PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 of the particular matter and the reasons 05:00:00PM</p> <p>3 for using a different period. 05:00:03PM</p> <p>4 Q. If it is an omissions case 05:00:04PM</p> <p>5 where the main focus is going to be the 05:00:06PM</p> <p>6 disclosure events, is it best practice to 05:00:08PM</p> <p>7 bracket the disclosure events as close to 05:00:13PM</p> <p>8 the middle of the estimation period as 05:00:15PM</p> <p>9 possible? 05:00:18PM</p> <p>10 A. It, again, depends upon the 05:00:22PM</p> <p>11 facts of a particular case and the reasons 05:00:24PM</p> <p>12 for choosing an estimation period. 05:00:29PM</p> <p>13 My issue with Dr. Feinstein's 05:00:31PM</p> <p>14 estimation period is that he, in a sense, 05:00:32PM</p> <p>15 artificially selects it. Because of his 05:00:36PM</p> <p>16 decision to strip Pharmacia's stock of the 05:00:42PM</p> <p>17 value of its new Monsanto holdings, he 05:00:45PM</p> <p>18 began his period on October 19, 2000. So 05:00:50PM</p> <p>19 the beginning of his estimation period is 05:00:53PM</p> <p>20 dictated by what I think is a faulty 05:00:57PM</p> <p>21 methodology. That's the only reason why 05:00:59PM</p> <p>22 he picked October 19, 2000. And then he 05:01:02PM</p> <p>23 took that through October 18, 2001. So 05:01:06PM</p> <p>24 his estimation period is straddling a 05:01:09PM</p> <p>25 period within the class period and then 05:01:11PM</p> |

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| Page 378                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 380                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 sometime after the class period. 05:01:14PM</p> <p>3 More importantly, because 05:01:17PM</p> <p>4 reasonable people can disagree about 05:01:19PM</p> <p>5 estimation period, but, more importantly, 05:01:21PM</p> <p>6 is if you simply take my estimation 05:01:23PM</p> <p>7 period, which I think is eminently 05:01:26PM</p> <p>8 reasonable, it is the class period, and 05:01:30PM</p> <p>9 you keep everything else the same in his 05:01:31PM</p> <p>10 model, his model doesn't find a 05:01:34PM</p> <p>11 statistically significant decline in 05:01:36PM</p> <p>12 Pharmacia stock price on February 7th, 05:01:38PM</p> <p>13 which he believes is important, I don't 05:01:40PM</p> <p>14 think it is important. I mean, it is 05:01:42PM</p> <p>15 important to note that he doesn't get it, 05:01:43PM</p> <p>16 but it is not relevant in my opinion to 05:01:45PM</p> <p>17 loss causation. 05:01:47PM</p> <p>18 So the bottom line here is that 05:01:48PM</p> <p>19 his estimation period in my judgment is 05:01:51PM</p> <p>20 very artificial, it is driven by a factor 05:01:53PM</p> <p>21 that shouldn't even be in play here, 05:01:56PM</p> <p>22 namely the stripping of new Monsanto 05:01:58PM</p> <p>23 holdings from Pharmacia. But, more 05:02:01PM</p> <p>24 importantly, it is not robust with respect 05:02:04PM</p> <p>25 to another estimation period, in my 05:02:07PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 results using everything else the same in 05:02:59PM</p> <p>3 his model, but my estimation period, his 05:03:01PM</p> <p>4 result on February 7th is no longer 05:03:05PM</p> <p>5 significant, I think is quite telling. He 05:03:07PM</p> <p>6 has got a very, very fragile model. 05:03:09PM</p> <p>7 Q. But the exact same would be 05:03:11PM</p> <p>8 true if you used your analysis and applied 05:03:13PM</p> <p>9 his estimation period, your analysis would 05:03:16PM</p> <p>10 say February 7th is statistically 05:03:18PM</p> <p>11 significant as well, isn't that correct, 05:03:20PM</p> <p>12 sir? 05:03:22PM</p> <p>13 A. Well, there are two things. 05:03:22PM</p> <p>14 I'm not sure of that. I haven't done 05:03:24PM</p> <p>15 that. There is that. But, second, is 05:03:26PM</p> <p>16 that in attempting to achieve statistical 05:03:29PM</p> <p>17 significance or show statistical 05:03:34PM</p> <p>18 significance, the burden is particularly 05:03:36PM</p> <p>19 high to show that when you have a 05:03:38PM</p> <p>20 statistically significant result, it is 05:03:40PM</p> <p>21 robust to alternative reasonable 05:03:42PM</p> <p>22 specifications. 05:03:44PM</p> <p>23 And if you can only get 05:03:48PM</p> <p>24 statistical significance by a contrived 05:03:49PM</p> <p>25 estimation period, whether with my model 05:03:51PM</p>                                                                      |
| Page 379                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 381                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 opinion a much more reasonable one. So 05:02:11PM</p> <p>3 his results are not robust with respect to 05:02:13PM</p> <p>4 a reasonable change in the estimation 05:02:16PM</p> <p>5 period. 05:02:17PM</p> <p>6 Q. His estimation period does more 05:02:17PM</p> <p>7 closely bracket the crucial February 6th 05:02:20PM</p> <p>8 through February 8th events than yours 05:02:23PM</p> <p>9 does; is that correct? 05:02:25PM</p> <p>10 MR. WANG: Objection. 05:02:26PM</p> <p>11 A. When you say "more closely 05:02:27PM</p> <p>12 brackets," I'm not sure if you mean 05:02:31PM</p> <p>13 calendar time. 05:02:33PM</p> <p>14 Q. Puts it right in the middle. 05:02:34PM</p> <p>15 A. But there are other ways you 05:02:35PM</p> <p>16 can test whether there were structural 05:02:37PM</p> <p>17 changes within the estimation period, and 05:02:39PM</p> <p>18 I tested that and there aren't any. So it 05:02:40PM</p> <p>19 is a red herring. 05:02:42PM</p> <p>20 I mean, it may be descriptively 05:02:43PM</p> <p>21 true that it is closer in time, but my 05:02:45PM</p> <p>22 choice of the class period does not in any 05:02:47PM</p> <p>23 way undermine the power of the test that I 05:02:49PM</p> <p>24 conducted versus the power of the test 05:02:53PM</p> <p>25 that he conducted. And the fact that his 05:02:55PM</p>                                                                  | <p>1 LEHN - CONFIDENTIAL</p> <p>2 or his model, that's not a robust result. 05:03:53PM</p> <p>3 Q. And the same would be true 05:03:58PM</p> <p>4 about using six months of data from a 05:04:03PM</p> <p>5 clinical trial that lasted over 12 months, 05:04:06PM</p> <p>6 that you would only get statistical 05:04:08PM</p> <p>7 significance at six months as opposed to 05:04:10PM</p> <p>8 12 months, that would not be a full 05:04:11PM</p> <p>9 disclosure of information that would be 05:04:13PM</p> <p>10 robust and subject to scientific 05:04:18PM</p> <p>11 criticism; is that correct, sir? 05:04:20PM</p> <p>12 MR. WANG: Objection. 05:04:21PM</p> <p>13 A. Well, you can't answer that in 05:04:22PM</p> <p>14 the abstract because there is a legitimate 05:04:24PM</p> <p>15 issue and I'm not a pharmaceutical expert. 05:04:26PM</p> <p>16 But as one who works with stock 05:04:30PM</p> <p>17 price data, we often confront issues about 05:04:32PM</p> <p>18 how long a period should you track a 05:04:35PM</p> <p>19 sample of companies. I did a paper a few 05:04:35PM</p> <p>20 years ago on boards of directors and it 05:04:42PM</p> <p>21 was a very thorny issue. I was looking at 05:04:44PM</p> <p>22 boards of directors from 1930 to about 05:04:47PM</p> <p>23 2000, and you have this issue of companies 05:04:50PM</p> <p>24 coming and going, some going bankrupt, 05:04:54PM</p> <p>25 some going private, some being taken over. 05:04:56PM</p> |

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| Page 382                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 384                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 So your population is changing 05:04:59PM</p> <p>3 over time. And that can, depending on the 05:05:01PM</p> <p>4 research question, create some issues such 05:05:04PM</p> <p>5 that one might want a more abbreviated 05:05:07PM</p> <p>6 sample period that gives rise to a more 05:05:10PM</p> <p>7 uniform sample such that you can make more 05:05:13PM</p> <p>8 meaningful comparisons. 05:05:16PM</p> <p>9 And I'm not weighing in on the 05:05:17PM</p> <p>10 merits of this issue with respect to the 05:05:18PM</p> <p>11 CLASS study, but I am saying that you 05:05:20PM</p> <p>12 can't jump to the conclusion that you just 05:05:22PM</p> <p>13 reached that reporting data for six 05:05:25PM</p> <p>14 months, but not for twelve months, 05:05:28PM</p> <p>15 inherently is misleading or whatever the 05:05:30PM</p> <p>16 word was you used. It is not. It depends 05:05:34PM</p> <p>17 upon the nature of the sample and the 05:05:35PM</p> <p>18 reason that one might give for reporting 05:05:37PM</p> <p>19 data over a shorter period versus a longer 05:05:39PM</p> <p>20 period. 05:05:41PM</p> <p>21 Q. The reader of the JAMA article 05:05:41PM</p> <p>22 wouldn't be able to make that assessment 05:05:44PM</p> <p>23 because they were only provided the 05:05:45PM</p> <p>24 six-month data, though, correct? 05:05:47PM</p> <p>25 MR. WANG: Objection. 05:05:48PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 estimation period other than that was the 05:06:34PM</p> <p>3 class period? 05:06:36PM</p> <p>4 A. Well, Pharmacia began trading 05:06:36PM</p> <p>5 shortly before the beginning of the class 05:06:40PM</p> <p>6 period, which pretty much rules out using 05:06:42PM</p> <p>7 a period prior to the class period. And 05:06:45PM</p> <p>8 in my opinion, given that there was, you 05:06:50PM</p> <p>9 know, roughly 16 months of class period 05:06:53PM</p> <p>10 data, the most appropriate period to use 05:06:58PM</p> <p>11 then was that class period. 05:07:01PM</p> <p>12 Q. And is there any peer-reviewed 05:07:02PM</p> <p>13 literature that supports your estimation 05:07:05PM</p> <p>14 period over Dr. Feinstein's estimation 05:07:06PM</p> <p>15 period, that supports your opinion here? 05:07:08PM</p> <p>16 A. Well, as I indicated, 05:07:11PM</p> <p>17 reasonable people can disagree about the 05:07:13PM</p> <p>18 estimation period. But I think there are 05:07:15PM</p> <p>19 two things to keep in mind with respect to 05:07:17PM</p> <p>20 Dr. Feinstein. One is it is the tail 05:07:19PM</p> <p>21 wagging the dog. The reason for his 05:07:23PM</p> <p>22 estimation period is this artificial 05:07:25PM</p> <p>23 construction of a new fictitious company 05:07:29PM</p> <p>24 that only consists of Pharmacia's 05:07:32PM</p> <p>25 pharmaceuticals operations. And that's a 05:07:34PM</p> |
| Page 383                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 385                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 A. Again, I don't know firsthand 05:05:49PM</p> <p>3 what JAMA was provided with. 05:05:50PM</p> <p>4 Q. But I'm saying, a reader, if 05:05:52PM</p> <p>5 you read the JAMA article, you wouldn't be 05:05:53PM</p> <p>6 able to make the assessment you just 05:05:56PM</p> <p>7 described because you wouldn't have the 05:05:57PM</p> <p>8 six and twelve-month data to compare? 05:05:59PM</p> <p>9 MR. WANG: Objection. 05:06:01PM</p> <p>10 A. Well, by definition, if you 05:06:02PM</p> <p>11 didn't have the results from that data, 05:06:03PM</p> <p>12 you couldn't compare. 05:06:05PM</p> <p>13 Q. So you would be in the dark? 05:06:06PM</p> <p>14 A. Well, you would still know 05:06:07PM</p> <p>15 that, from public information, that this 05:06:12PM</p> <p>16 was more than a six-month trial and that 05:06:13PM</p> <p>17 there were some people in the study for 05:06:15PM</p> <p>18 more than six months. But obviously if 05:06:17PM</p> <p>19 the actual results are not reported, then 05:06:21PM</p> <p>20 you can't make a direct comparison. 05:06:23PM</p> <p>21 Q. Now, you said you used the 05:06:26PM</p> <p>22 class period for your estimation period. 05:06:28PM</p> <p>23 We are going back to that now. 05:06:29PM</p> <p>24 Any other basis for using the 05:06:31PM</p> <p>25 class period -- or for using your 05:06:32PM</p>                               | <p>1 LEHN - CONFIDENTIAL</p> <p>2 bad reason for selecting your estimation 05:07:38PM</p> <p>3 period, because that's not a proper way to 05:07:41PM</p> <p>4 conduct an event study analysis in this 05:07:44PM</p> <p>5 matter. 05:07:46PM</p> <p>6 And then the second reason, 05:07:47PM</p> <p>7 again, is that his result is not robust 05:07:51PM</p> <p>8 with respect to using the class period as 05:07:53PM</p> <p>9 the estimation period. 05:07:56PM</p> <p>10 Q. Now, why do you think the 05:07:59PM</p> <p>11 period you chose as your estimation period 05:08:00PM</p> <p>12 is the class period? 05:08:03PM</p> <p>13 A. Well, it is the period of April 05:08:05PM</p> <p>14 17th, 2000 through August 5th, 2001. 05:08:08PM</p> <p>15 Q. And what leads you to believe 05:08:12PM</p> <p>16 that that's the class period in this case? 05:08:15PM</p> <p>17 A. My recollection is that that 05:08:16PM</p> <p>18 was laid out in the complaint. 05:08:22PM</p> <p>19 Q. The complaint, actually, as you 05:08:23PM</p> <p>20 recall from your work on class 05:08:27PM</p> <p>21 certification, had a class period that 05:08:29PM</p> <p>22 ended in June of 2002, is that correct, 05:08:32PM</p> <p>23 and that was one of the modifications -- 05:08:34PM</p> <p>24 A. That was one of the 05:08:34PM</p> <p>25 modifications. I'm trying to recall the 05:08:35PM</p>                                                                             |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 basis for that. 05:08:37PM</p> <p>3 Q. Did you review the Third 05:08:39PM</p> <p>4 Circuit opinion in order to come up with 05:08:40PM</p> <p>5 that class period of August? 05:08:41PM</p> <p>6 A. I don't recall as I sit here. 05:08:43PM</p> <p>7 Q. You may have reviewed the Third 05:08:44PM</p> <p>8 Circuit opinion? 05:08:46PM</p> <p>9 A. It is possible. 05:08:47PM</p> <p>10 Q. And are you aware that the 05:08:48PM</p> <p>11 Third Circuit assessed a three-day window 05:08:49PM</p> <p>12 of February 6th through February 8th in 05:08:52PM</p> <p>13 coming to its conclusions regarding 05:08:55PM</p> <p>14 materiality in this case? 05:08:56PM</p> <p>15 MR. WANG: Objection. 05:08:58PM</p> <p>16 A. I have seen reference to that, 05:08:59PM</p> <p>17 correct. 05:09:01PM</p> <p>18 Q. And in fact the Third Circuit 05:09:01PM</p> <p>19 said that materiality is self-evident 05:09:03PM</p> <p>20 based on the 9 percent stock decline 05:09:06PM</p> <p>21 between February 6th and February 8th; is 05:09:08PM</p> <p>22 that correct? 05:09:11PM</p> <p>23 MR. WANG: Objection. 05:09:11PM</p> <p>24 A. I've seen reference to that, 05:09:12PM</p> <p>25 yes. 05:09:13PM</p>                                                                                               | <p>1 LEHN - CONFIDENTIAL</p> <p>2 efficient. And if the efficiency of that 05:10:05PM</p> <p>3 market had not been established as of the 05:10:08PM</p> <p>4 time that the Third Circuit rendered its 05:10:10PM</p> <p>5 opinion, then perhaps its opinion would be 05:10:13PM</p> <p>6 different. 05:10:16PM</p> <p>7 Third, and, again, I'm not a 05:10:18PM</p> <p>8 legal scholar, I'm not sure at the time of 05:10:20PM</p> <p>9 the Third Circuit opinion that there was 05:10:24PM</p> <p>10 agreement as to what the alleged 05:10:28PM</p> <p>11 corrective disclosures in this matter are. 05:10:30PM</p> <p>12 And both Dr. Feinstein and I agree that 05:10:32PM</p> <p>13 the alleged corrective disclosures were 05:10:34PM</p> <p>14 made on February 6th and there was no 05:10:36PM</p> <p>15 subsequent alleged corrective disclosure. 05:10:38PM</p> <p>16 And if that was not a premise 05:10:41PM</p> <p>17 of the Third Court's opinion -- the Third 05:10:43PM</p> <p>18 Circuit's opinion, then perhaps that would 05:10:47PM</p> <p>19 be -- their opinion would be different if 05:10:50PM</p> <p>20 in fact that was the agreed-upon alleged 05:10:52PM</p> <p>21 corrective disclosures. 05:10:54PM</p> <p>22 Q. And how did you select your 05:10:55PM</p> <p>23 peer index in this case? 05:10:58PM</p> <p>24 A. Well, again, what I do in -- 05:10:59PM</p> <p>25 typically do in matters such as this is I 05:11:04PM</p>                                 |
| Page 387                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 389                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 Q. And do you understand that the 05:09:13PM</p> <p>3 Third Circuit opinion is controlling 05:09:14PM</p> <p>4 opinion in this case? 05:09:17PM</p> <p>5 MR. WANG: Objection, calls for 05:09:18PM</p> <p>6 a legal conclusion. 05:09:19PM</p> <p>7 A. I'm not a lawyer. 05:09:21PM</p> <p>8 Q. But you are in disagreement 05:09:22PM</p> <p>9 with the court's legal findings? 05:09:23PM</p> <p>10 MR. WANG: Objection. 05:09:25PM</p> <p>11 A. You know, I'm not here to offer 05:09:26PM</p> <p>12 a legal opinion. So the court's opinion 05:09:27PM</p> <p>13 obviously is a legal opinion, and, you 05:09:30PM</p> <p>14 know, there are a number of factors to 05:09:34PM</p> <p>15 consider. 05:09:36PM</p> <p>16 One is that I'm not telling the 05:09:36PM</p> <p>17 court what materiality is from a legal 05:09:38PM</p> <p>18 point of view, but I am here to offer an 05:09:43PM</p> <p>19 opinion as to whether information is 05:09:45PM</p> <p>20 material to investors, and insofar that 05:09:48PM</p> <p>21 informs the court, then that's the limit 05:09:51PM</p> <p>22 of what I'm doing. 05:09:55PM</p> <p>23 Second is I don't know that the 05:09:57PM</p> <p>24 Third Circuit made a judgment as to 05:09:59PM</p> <p>25 whether the market for Pharmacia stock is 05:10:02PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 like to let the data tell me the best 05:11:06PM</p> <p>3 group of peer companies, and I start by 05:11:09PM</p> <p>4 reviewing analyst reports and creating a 05:11:13PM</p> <p>5 matrix of companies that are most 05:11:16PM</p> <p>6 frequently identified as peer companies, 05:11:20PM</p> <p>7 as the company at hand. And then you get 05:11:23PM</p> <p>8 a count, and these companies were the ones 05:11:25PM</p> <p>9 most frequently mentioned, and you start 05:11:28PM</p> <p>10 putting in a regression model. 05:11:31PM</p> <p>11 So the ones that are most 05:11:31PM</p> <p>12 frequently mentioned in the peer index, 05:11:35PM</p> <p>13 you record the adjusted r-squared and then 05:11:35PM</p> <p>14 you bring in the next most frequently 05:11:38PM</p> <p>15 group, bring them in, and if the adjusted 05:11:41PM</p> <p>16 r-squared goes up, it means these 05:11:43PM</p> <p>17 additional companies are adding 05:11:45PM</p> <p>18 explanatory power to the regression, which 05:11:47PM</p> <p>19 is good, and if the adjusted r-squared 05:11:48PM</p> <p>20 goes down, which it does if you add the 05:11:50PM</p> <p>21 chemical index, you say this is not adding 05:11:52PM</p> <p>22 explanatory power, and at that point I 05:11:55PM</p> <p>23 then truncate my peer index. 05:11:56PM</p> <p>24 In this case, there were nine 05:11:58PM</p> <p>25 companies that -- whose inclusion improved 05:12:01PM</p> |

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| <p>1 LEHN - CONFIDENTIAL</p> <p>2 the adjusted r-squared of the model, and 05:12:06PM</p> <p>3 then I excluded Pfizer and Merck simply 05:12:10PM</p> <p>4 because Pfizer co-markets Celebrex and 05:12:13PM</p> <p>5 there is controversy about Vioxx and 05:12:16PM</p> <p>6 Merck. But I also replicated the model 05:12:20PM</p> <p>7 using Pfizer and Merck and my results are 05:12:22PM</p> <p>8 largely unaffected and certainly don't 05:12:27PM</p> <p>9 affect my opinion. 05:12:29PM</p> <p>10 Q. Somewhere roughly around 15 or 05:12:29PM</p> <p>11 20 percent of Pharmacia's business was 05:12:32PM</p> <p>12 agricultural and chemical though; is that 05:12:33PM</p> <p>13 correct? 05:12:36PM</p> <p>14 A. I don't recall. It is always a 05:12:36PM</p> <p>15 question of what do you mean by 05:12:41PM</p> <p>16 "business." Are you talking about -- 05:12:42PM</p> <p>17 Q. Revenues. 05:12:44PM</p> <p>18 A. Yeah, but that's -- I don't 05:12:44PM</p> <p>19 know the answer to that. 05:12:46PM</p> <p>20 Q. And you don't know because of 05:12:47PM</p> <p>21 the way you did your peer index whether 05:12:48PM</p> <p>22 there was agricultural or chemical-related 05:12:51PM</p> <p>23 news pouring into the marketplace on 05:12:54PM</p> <p>24 particular dates that may have -- that 05:12:58PM</p> <p>25 they are not factored -- since you didn't 05:13:02PM</p>                                                            | <p>1 LEHN - CONFIDENTIAL</p> <p>2 chemical index. 05:14:01PM</p> <p>3 Q. Are there any other bases for 05:14:02PM</p> <p>4 your choice of peer index? 05:14:03PM</p> <p>5 A. Any other bases? 05:14:08PM</p> <p>6 Q. Is there any other support for 05:14:10PM</p> <p>7 why you chose the peer index you chose 05:14:12PM</p> <p>8 other than what you just described to me? 05:14:16PM</p> <p>9 A. Again, I think it is the most 05:14:17PM</p> <p>10 objective way to determine the 05:14:18PM</p> <p>11 specification of the model, the regression 05:14:20PM</p> <p>12 model for doing the event study, is to let 05:14:23PM</p> <p>13 the data tell you which peer companies 05:14:25PM</p> <p>14 provide the best fit. 05:14:27PM</p> <p>15 Q. Why didn't you use -- the 05:14:28PM</p> <p>16 company, in its 10-K, described a peer 05:14:30PM</p> <p>17 index. Why didn't you use that as the 05:14:34PM</p> <p>18 peer index? 05:14:36PM</p> <p>19 A. Because, again, the criterion 05:14:39PM</p> <p>20 that I was looking at was the adjusted 05:14:42PM</p> <p>21 r-squared. I'm not casting aspersions on 05:14:44PM</p> <p>22 companies identified in peer companies, 05:14:47PM</p> <p>23 but I do know that as a general rule you 05:14:49PM</p> <p>24 should let the data tell you who the best 05:14:51PM</p> <p>25 index is, which collection of companies is 05:14:53PM</p>        |
| Page 391                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 393                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 LEHN - CONFIDENTIAL</p> <p>2 use any chemical companies or any 05:13:04PM</p> <p>3 agricultural companies, you didn't do 05:13:08PM</p> <p>4 anything to control for chemical or 05:13:10PM</p> <p>5 agricultural-related news that may have 05:13:12PM</p> <p>6 affected some of the relevant dates; is 05:13:14PM</p> <p>7 that correct? 05:13:16PM</p> <p>8 A. Again, there are two things 05:13:16PM</p> <p>9 that stand out. One is that I based the 05:13:19PM</p> <p>10 identity of the peer companies on what 05:13:22PM</p> <p>11 analysts identified as the peer companies 05:13:24PM</p> <p>12 of Pharmacia, and then I let the 05:13:26PM</p> <p>13 regression -- I did a lot of sensitivities 05:13:29PM</p> <p>14 to see which model of peer companies 05:13:31PM</p> <p>15 provided the most explanatory power. 05:13:35PM</p> <p>16 Second, as I indicated, is if 05:13:38PM</p> <p>17 you add the chemical index to 05:13:39PM</p> <p>18 Dr. Feinstein's model, you see the 05:13:41PM</p> <p>19 adjusted r-squared actually goes down and 05:13:43PM</p> <p>20 the inclusion of the chemical index does 05:13:46PM</p> <p>21 not have a statistically significant 05:13:48PM</p> <p>22 coefficient, which means that there is no 05:13:50PM</p> <p>23 scientific basis to believe that there is 05:13:52PM</p> <p>24 a direct relation between the returns on 05:13:56PM</p> <p>25 Pharmacia's stock and the returns on the 05:13:59PM</p> | <p>1 LEHN - CONFIDENTIAL</p> <p>2 the best index. 05:14:55PM</p> <p>3 I'm not saying Pharmacia did 05:14:57PM</p> <p>4 this. But companies have been known to 05:14:58PM</p> <p>5 strategically pick peer companies based on 05:15:00PM</p> <p>6 relative performance, and that isn't 05:15:03PM</p> <p>7 exactly what you want if you are 05:15:05PM</p> <p>8 estimating a regression model where you 05:15:08PM</p> <p>9 are trying to get a good fit. 05:15:10PM</p> <p>10 Q. Looking at paragraph 23 on page 05:15:11PM</p> <p>11 7 of your rebuttal report, which is 05:15:15PM</p> <p>12 Exhibit 516, you say "It also was known 05:15:17PM</p> <p>13 that the FDA Advisory Panel's briefing 05:15:20PM</p> <p>14 documents would be posted to the FDA's 05:15:23PM</p> <p>15 website the day prior to the hearing and 05:15:26PM</p> <p>16 analysts were ready to promptly evaluate 05:15:28PM</p> <p>17 such documents in order to estimate any 05:15:30PM</p> <p>18 changes in the drug's prospects from 05:15:33PM</p> <p>19 current market expectations." 05:15:36PM</p> <p>20 And then you quote Dr. Fiorino; 05:15:37PM</p> <p>21 is that correct? 05:15:40PM</p> <p>22 A. That's correct. 05:15:40PM</p> <p>23 Q. Other than Dr. Fiorino's 05:15:40PM</p> <p>24 report, is there any other basis for your 05:15:43PM</p> <p>25 statement in paragraph 23 that I just read 05:15:44PM</p> |

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|          |                                                      |          |                                      |
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| Page 394 |                                                      | Page 396 |                                      |
| 1        | LEHN - CONFIDENTIAL                                  | 1        |                                      |
| 2        | to you? 05:15:46PM                                   | 2        | INDEX                                |
| 3        | A. That's the only one that I can 05:15:46PM         | 3        |                                      |
| 4        | think of as I sit here. 05:16:02PM                   | 4        | WITNESS EXAMINATION BY PAGE          |
| 5        | Q. And what's confounding 05:16:06PM                 | 5        | LEHN SAHAM 6                         |
| 6        | information? How do you define 05:16:09PM            | 6        |                                      |
| 7        | confounding information in the context of 05:16:13PM | 7        | EXHIBITS                             |
| 8        | your event study regression analysis with 05:16:15PM | 8        |                                      |
| 9        | respect to determining loss causation and 05:16:16PM | 9        | PLAINTIFFS' DESCRIPTION PAGE         |
| 10       | materiality in the securities context? 05:16:21PM    | 10       | Exhibit 500 Expert report of Lehn 6  |
| 11       | MR. WANG: Objection. 05:16:21PM                      | 11       | Exhibit 501 Article entitled 23      |
| 12       | A. Well, confounding information 05:16:22PM          | 12       | Comparison of Upper                  |
| 13       | would be information other than the 05:16:24PM       | 13       | Gastrointestinal                     |
| 14       | information at issue that might have 05:16:26PM      | 14       | Toxicity of Rofecoxib                |
| 15       | affected the stock price on the relevant 05:16:28PM  | 15       | and Naproxen in Patients             |
| 16       | day. 05:16:31PM                                      | 16       | with Rheumatoid                      |
| 17       | MR. SAHAM: Why don't we take 05:16:54PM              | 17       | Arthritis                            |
| 18       | just like a two-minute break. I think we 05:16:55PM  | 18       | Exhibit 502 Article entitled 24      |
| 19       | are pretty much done. I would like to 05:16:57PM     | 19       | Celecoxib clinical                   |
| 20       | confer with my colleagues very briefly. 05:16:59PM   | 20       | profile                              |
| 21       | THE VIDEOGRAPHER: The time is 05:17:01PM             | 21       | Exhibit 503 Article entitled The 24  |
| 22       | approximately 5:16 p.m. We are off the 05:17:02PM    | 22       | Intraday Speed of                    |
| 23       | record. 05:17:05PM                                   | 23       | Adjustment of Stock                  |
| 24       | (Recess taken.) 05:17:05PM                           | 24       | Prices to Earnings                   |
| 25       | THE VIDEOGRAPHER: The time is 05:20:11PM             | 25       | and Dividend                         |
|          |                                                      |          | Announcements                        |
|          |                                                      |          | Exhibit 504 Expert report Lehn 37    |
|          |                                                      |          | in Ohio Public                       |
|          |                                                      |          | Employees Retirement                 |
|          |                                                      |          | System v. Parsons                    |
|          |                                                      |          | Exhibit 505 Transcript of Lehn 44    |
|          |                                                      |          | dated 3/30/07                        |
|          |                                                      |          | Exhibit 506 Affidavit of Howard 58   |
|          |                                                      |          | R. Philips                           |
|          |                                                      |          | Exhibit 507 CIBC research report 114 |
|          |                                                      |          | Exhibit 508 Rebuttal report 167      |
|          |                                                      |          | of Feinstein                         |
|          |                                                      |          | Exhibit 509 Bear Stearns 204         |
|          |                                                      |          | research report                      |
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CONFIDENTIAL

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CERTIFICATION

I, TODD DeSIMONE, a Notary Public for  
and within the State of New York, do  
hereby certify:

That the witness whose testimony as  
herein set forth, was duly sworn by me;  
and that the within transcript is a true  
record of the testimony given by said  
witness.

I further certify that I am not related  
to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 28th day of October, 2011.

TODD DESIMONE

\* \* \*

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# EXHIBIT 4

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| ALASKA ELECTRICAL PENSION           | ) | NO. 03-1519 (AET)   |
| FUND, CITY OF SARASOTA              | ) | (Consolidated)      |
| FIREFIGHTERS' PENSION FUND,         | ) |                     |
| INTERNATIONAL UNION OF              | ) | <u>CLASS ACTION</u> |
| OPERATING ENGINEERS LOCAL           | ) |                     |
| 132 PENSION PLAN, NEW ENGLAND       | ) |                     |
| HEALTH CARE EMPLOYEES               | ) |                     |
| PENSION FUND, CHEMICAL VALLEY       | ) |                     |
| PENSION FUND OF WEST VIRGINIA,      | ) |                     |
| and PACE INDUSTRY UNION-            | ) |                     |
| MANAGEMENT PENSION FUND, On         | ) |                     |
| Behalf of Themselves and All Others | ) |                     |
| Similarly Situated,                 | ) |                     |
|                                     | ) |                     |
| Plaintiffs,                         | ) |                     |
|                                     | ) |                     |
| v.                                  | ) |                     |
|                                     | ) |                     |
| PHARMACIA CORPORATION, FRED         | ) |                     |
| HASSAN, G. STEVEN GEIS, CARRIE      | ) |                     |
| COX, and PFIZER, INC.,              | ) |                     |
|                                     | ) |                     |
| Defendants.                         | ) |                     |

**REBUTTAL EXPERT REPORT OF DR. ANTHONY FIORINO  
IN RESPONSE TO THE EXPERT REPORT OF DR. STEVEN P. FEINSTEIN,  
DATED JUNE 6, 2011**

**JULY 15, 2011**

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**REBUTTAL EXPERT REPORT OF DR. ANTHONY FIORINO**  
**IN RESPONSE TO THE EXPERT REPORT OF DR. STEVEN P. FEINSTEIN,**  
**DATED JUNE 6, 2011**

**A. Summary**

Dr. Feinstein's expert report<sup>1</sup> analyzes the movement of Pharmacia's stock price in relation to various news and events, including those related to the disclosures of data from and results of the CLASS study during and after the Class Period. I will not dispute Dr. Feinstein's finding that the market for Pharmacia's stock was efficient, which leaves only a single finding of import in Dr. Feinstein's report – his claim that the decline in Pharmacia's stock price over the three day period February 6-8, 2001 was significant and was caused by the disclosure of material and previously undisclosed results of the CLASS study. Based on this claim, he calculates that investors who purchased Pharmacia stock during the Class Period acquired the stock at a price that was inflated by up to \$5.92 per share, and that "No detectable inflation remained after 8 February 2001."<sup>2</sup> Dr. Feinstein arrives at the figure of \$5.92 by adjusting the Pharmacia stock price decline of \$5.28 from February 6-8, 2001 for market and sector performance and attempts to remove any contribution from Pharmacia's stake in Monsanto.<sup>3</sup> Because "the residual decline was too great to be attributable to random volatility,"<sup>4</sup> concludes Dr. Feinstein, "the loss in value must have been caused by Company-specific information."<sup>5</sup> That

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<sup>1</sup> Report on Market Efficiency, Loss Causation, and Damages: Steven P. Feinstein, Ph.D., CFA, June 6, 2011 ("Feinstein Report").

<sup>2</sup> Feinstein Report at ¶ 21.

<sup>3</sup> *Id.* at ¶¶ 176 – 203, 251 – 255, 272 – 280 & Exhibit-13.

<sup>4</sup> *Id.* at ¶ 251.

<sup>5</sup> *Id.*



Company-specific information being, according to Dr. Feinstein, the results of the CLASS study that were allegedly not initially disclosed.

Dr. Feinstein is wrong. The fully curative disclosure of the initially undisclosed CLASS results occurred on February 6, 2001. As Dr. Feinstein concedes, this disclosure provoked no reaction in the Pharmacia stock price; therefore, he must rely on a contrived, arbitrary and unsupported concept that the newly disclosed CLASS results took three days to be assimilated by the market into Pharmacia's stock price. The assumptions underlying his concept are invalid and the historical record counters his speculative theory that the dissemination of information contained in FDA briefing documents takes three days. Dr. Feinstein's errors result in part from his summary dismissal, without any stated rationale, of the February 8, 2001 FDA Advisory Committee vote in favor of a Vioxx label change, a material adverse development for Pharmacia that was unrelated to the disclosure of the entire CLASS data on February 6, 2001. In my expert report submitted June 7, 2011,<sup>6</sup> I detailed the abundant evidence proving this to be the critical factor in driving a price decline in Pharmacia's stock on February 8 – which constitutes 59% of the overall decline in Pharmacia's stock price over the 3-day period from February 6 to February 8, which Dr. Feinstein relies upon to establish loss causation.<sup>7</sup> Dr. Feinstein also repeats an error made by the Plaintiffs in their initial complaint: that Pharmacia's stock price rose in response of the initial April 15, 2000 release of the CLASS data over the course of April 17-19, 2000. Finally, Dr. Feinstein's attempt to remove the impact of Monsanto from the market's valuation of Pharmacia shares is unjustified and is laden with potential bias and error.

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<sup>6</sup> Expert Report of Dr. Anthony Fiorino, June 7, 2011 ("Fiorino Report").

<sup>7</sup> See Fiorino Report at pp. 32-38.

In this report I reveal multiple factual errors that undermine the assumptions Dr. Feinstein relies upon in developing his theory that the February 6, 2001 disclosures took three days to disseminate to the market. I further provide data from nearly a decade of FDA Advisory Committee meetings demonstrating that the information contained in FDA briefing documents is immediately assimilated by the market, eliminating any reasonable possibility that the disclosure of the initially undisclosed CLASS results could have contributed to the Pharmacia stock price declines on February 7 and 8, 2001. I will also present, in summary form, my findings previously submitted to the Court demonstrating that the Pharmacia stock price decline on February 8, 2001 was caused by the FDA Advisory Committee vote to recommend a label change for Vioxx. I will also refute Dr. Feinstein's claim that Pharmacia's stock price rose in response to the initial release of the CLASS data. Finally, I will expose real and theoretical problems with his attempt to isolate the market's valuation of Pharmacia's pharmaceutical business by breaking Pharmacia into component parts (*i.e.*, removing the Monsanto agriculture business) for the purposes of his report. It is my opinion that Dr. Feinstein's conclusions are so far-fetched and moreover so obviously contrary to reality that his report does not represent a valid expert opinion but rather an artifice to support a pre-defined goal of demonstrating loss causation.<sup>8</sup>

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<sup>8</sup> In forming the opinions expressed herein, I have considered the documents referred to in the Fiorino Report, documents referred to in the Feinstein Report, documents referred to in the Expert Report of Debra Bowen, M.D., FACAAI, and the documents referred to in this report. Additional facts and data considered are identified in Exhibit 1. I reserve the right to modify my opinions in light of additional facts or data, if such are presented to me.

**B. The Response of Market Participants to the Public Release of  
Advisory Committee Briefing Documents is Immediate**

Over the course of the decade I spent on Wall Street, including approximately three years as a sell-side analyst covering the U.S. pharmaceutical industry, and seven as an investor in the pharmaceutical and biotechnology industries, I have had many personal encounters with rapid market responses to material news emerging for pharmaceutical and biotechnology stocks, including stock volatility driven by the release of FDA Advisory Committee briefing documents and the Advisory Committee meetings themselves. My real-life experience with these matters is wholly inconsistent with Dr. Feinstein's theoretical construct, and the analyses set forth in this report definitively establish that Dr. Feinstein's conclusions are wrong, as a matter of fact and irrefutable empirical evidence.

**1. The Assumptions Underlying Dr. Feinstein's Three Day  
Theory Have No Basis In Fact**

Dr. Feinstein's opinion that it took three days for the market to incorporate the corrective disclosures made on February 6, 2001 is based, largely, on three assertions: that the corrective disclosures were (1) "irregular," (2) "complex" and (3) "voluminous."<sup>9</sup> All of these assertions are patently erroneous. The timing of the corrective disclosures was known precisely and well in advance, the incrementally new information alleged by the Plaintiffs to be highly material consisted of five simply and easily accessible data points, and moreover the relevance of these data points was inconsequential in light of the other newly disclosed information—the opinions of the FDA reviewers. Finally, Dr.

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<sup>9</sup> Feinstein Report at ¶ 73 ("The new information provided to the market was complex, voluminous, and irregular in that it ran contrary to prior representations and that its time of release was not scheduled with precision. Consequently, it took some time for the market to process the new information.")

Feinstein erroneously claims that analyst reports continued to disseminate the initially undisclosed CLASS results on February 8, 2001, a blatantly false claim, as will be shown below.

**a. The Timing Of The Corrective Disclosure Was Not “Irregular” But Was Expected**

According to Dr. Feinstein, the timing of the corrective disclosure – the posting of the FDA briefing documents on the FDA website – was “irregular” and this “irregularity” caused it to take more time for the market to digest the corrective information than it would have taken if the disclosure were “regular” or anticipated.

Not only were the disclosure events in this case complex, but their timing was irregular. Neither the posting of the FDA briefing reports on the agency’s website, nor the publication of the *Washington Post* exposé, conformed to a preannounced schedule.<sup>10</sup>

This factual contention is demonstrably false. As a matter of indisputable fact, the market knew months in advance when the briefing documents would be posted on the FDA website and analysts were poised to immediately review and digest the information contained in those documents.

The FDA publishes a notice in the Federal Register announcing the date of a scheduled advisory committee meeting. On December 27, 2000, Federal Register Vol. 65, No. 249 announced that a public hearing of the Arthritis Advisory Committee would be held on February 7, 8 and 9, 2001 and listed as the “Agenda” for February 7, 2001: “The discussion is for modification of the [Celebrex] label based on the results of the

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<sup>10</sup> *Id.* at ¶165.



CLASS Trial, a study of the incidence of significant upper gastrointestinal effects.”<sup>11</sup> Even prior to this, industry publications such as The Pink Sheet of December 18, 2000, had publicized the February 7, 2001 FDA Arthritis Advisory Committee review of Celebrex.<sup>12</sup> Pharmaceutical industry analysts and other market observers were well aware of the fact that such notices were routinely published in industry publications and in the Federal Register and, like my team at J.P. Morgan, actively monitored these sources for such notices. Further, my team was well aware, as was the entire market, that Pharmacia had filed an sNDA in June 2000 seeking a label change based on CLASS and so we actively monitored these sources for specific notice of an Advisory Committee meeting on Pharmacia’s sNDA.

Dr. Feinstein contrasts the disclosure of the Advisory Committee briefing documents with earnings announcements, which he accurately states “are generally scheduled and are therefore expected.”<sup>13</sup> However, as a matter of fact, Advisory Committee meeting dates are known further in advance of the event than are earnings announcements. This means that the market can be more prepared for an Advisory Committee meeting, which affects just a single drug out of a pharmaceutical company’s entire profile, than it can be for an earnings announcement, which relates to every aspect of the company’s business.

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<sup>11</sup> Federal Register, Vol. 65, No. 249, Wednesday, December 27, 2000 at pp. 81875-76, available at <http://www.gpo.gov/fdsys/pkg/FR-2000-12-27/pdf/FR-2000-12-27.pdf> (last visited July 15, 2011). According to the Federal Register, “Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).”

<sup>12</sup> “Celebrex, Vioxx GI Safety Data To Be Reviewed By FDA Committee Feb. 7-8,” The Pink Sheet, December 18, 2000.

<sup>13</sup> Feinstein Report at ¶162.

Not only was the date of the Arthritis Advisory Committee meeting known well in advance, but the date of the posting of the briefing documents was also known. During the period in question, securities analyst and investors were well aware that it was the pattern and practice of the FDA to post Advisory Committee briefing documents on its website one day in advance of the scheduled Advisory Committee meeting.<sup>14</sup> Indeed, the posting of briefing documents is an eagerly awaited event. I personally recall, on several occasions, repeatedly refreshing my internet browser, which was pointed to the FDA's Advisory Committee website, every few minutes over a period of hours in an attempt to catch briefing documents the moment that they were posted. In this case, the posting of the briefing documents was completely disseminated no later than 10:05 AM on February 6, 2001, the time at which a Bloomberg newswire story described "a U.S. government review" as finding that Celebrex "isn't significantly less likely to cause stomach problems than older, cheaper painkillers" and added that the

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<sup>14</sup> See Guidance for Industry: Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000, available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm079679.pdf> (last visited July 15, 2011); see also December 1999 draft Guidance for Industry: Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000, available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm079675.pdf> (last visited July 13, 2011) which states that briefing documents will be posted on the FDA web site 24 hours prior to the Advisory Committee meeting, as was, in fact, FDA's practice. This policy went into effect in January 2000 as a result of an FDA settlement of a lawsuit (Public Citizen Health Research Group v. FDA, Civ. No. 99-0177(JR), 2000 WL 34262802 (D.D.C. Jan. 19, 2000)). The guidance was updated in August, 2008, available at: <http://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM125650.pdf> (last visited July 13, 2011), to extend the time for posting briefing documents to two days prior to the Advisory Committee meeting. It is my recollection that in 2001 briefing documents were rarely, if ever, posted more than 24 hours prior to the Advisory Committee meeting.

FDA's review "could mean problems for Pharmacia . . . when it asks an FDA advisory panel to support changes to the drug's label."<sup>15</sup>

Because, as described immediately above, the date of Advisory Committee meetings are known in advance and because the briefing documents are posted to the FDA website one or two days prior to the meeting, there is ample time for analysts and investors to prepare for these two events. The moment the briefing documents are posted triggers a crucial race to digest the salient points as quickly as possible and for sell-side analysts to communicate those points to the sales force and clients (*e.g.*, portfolio managers, buy-side analysts, retail and other investors). Similarly, investors and traders reviewing the documents may choose to buy, sell or hold a position on the basis of their own analysis. The questions on which the FDA is seeking advisory committee input and voting are also reviewed, as the scope of the questions can indicate the FDA's general approach and whether certain issues have already been taken "off the table." This initial review is enough, generally, to indicate whether expectations are likely to be met, missed or exceeded and, if missed, by what magnitude. Analysts distribute the data, their interpretations and their investment conclusions to investors via multiple channels including institutional and retail sales forces, phone calls, emails, and issuance of notes through services such as First Call. Analyst comments and views are frequently cited in coverage by financial news media as well. This reality is utterly incompatible with Dr. Feinstein's imaginary extended three day market response.

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<sup>15</sup> February 6, 2001, Bloomberg News, "Pharmacia Hasn't Shown Celebrex Safety Benefit, FDA Review Says" (reflecting time stamp of 10:05:02).

**b. The New Information From The CLASS Study Was Neither “Complex” Nor “Voluminous”**

Second, Dr. Feinstein contends that it took three days to assimilate the corrective information into Pharmacia’s stock price because the volume and complexity of information in the briefing documents necessarily required substantial time for the market to digest. In this regard, he notes that “the staff reports span over 250 pages of highly complex scientific and statistical analysis.”<sup>16</sup> This argument is a classic red-herring because the entirety of the briefing documents – containing perhaps thousands of data points and analyses not at issue in this matter – did not constitute the allegedly corrective disclosure in this matter. Rather, the allegedly corrective disclosure here consisted of only *five data points* contained in the briefing documents.<sup>17</sup> Indeed, as set forth in Dr. Feinstein’s report, which echoes Plaintiffs’ Response to Interrogatory No. 20,<sup>18</sup> the corrective disclosures here were that:

(1) “the entire study results were far less favorable to Celebrex than the publicly reported six-month results, as 6 of the 7 complicated ulcers occurring after the first six months of the CLASS trial were suffered by patients being treated with Celebrex,”

(2) “the reported GI comparisons worsened after six months,”

(3) “the statistically significant benefit for Celebrex users not taking aspirin that Defendants reported based upon six months of data for complicated ulcers did not hold for the entire study period.”

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<sup>16</sup> Feinstein Report at ¶164 (*citing Pharmacia*, 554 F.3d at 349 (internal citations omitted)).

<sup>17</sup> As explained in my initial expert report, the initially undisclosed information was completely immaterial. The discussion here, or anywhere else in this report, should not be read as a concession that the initially undisclosed information was material.

<sup>18</sup> Plaintiffs’ Response to Defendants Pharmacia Corporation, Fred Hassan, G. Steven Geis, Carrie Cox, and Pfizer, Inc.’s Second Set of Interrogatories, dated March 31, 2011.



(4) “Celebrex failed to establish any statistically significant difference with diclofenac on any of the GI endpoints considered,” and

(5) “diclofenac was actually numerically superior to Celebrex on one of the two co-primary endpoints of the study.”<sup>19</sup>

Each of these data-points is included in Dr. Witter’s Medical Officer Review, in an eight-page section entitled “Study Results,” “Endpoint (CSUGIE) results.”<sup>20</sup> This is one of the first places that an analyst or investor would look when reviewing the briefing documents since that section would contain the topline results (meaning, a summary of the study findings) of the trial. Similarly, in the ten pages comprising the Statistical Reviewer’s Briefing Document for the Advisory Committee (exclusive of Appendices) each of the five allegedly omitted data points is discussed.<sup>21</sup> By way of example, it would take an analyst or investor but moments to compare Table 2 of the Statistical Reviewer’s Briefing Document, which reflects the “Summary of CSUGIE Incidence” for the entire study period:

**Table 2. Summary of CSUGIE Incidence**

|                             | Celebrex<br>400 mg BID | Diclofenac<br>75 mg BID | Ibuprofen<br>800 mg TID | Log-Rank P Values for Celebrex vs.<br>Diclofenac Ibuprofen Both |       |       |
|-----------------------------|------------------------|-------------------------|-------------------------|-----------------------------------------------------------------|-------|-------|
| No. of Patients             | n=3987                 | n=1996                  | n=1985                  |                                                                 |       |       |
| No. of CSUGIE<br>Uncensored | 17                     | 10                      | 11                      |                                                                 |       |       |
| Censored*                   | 3                      | 1                       | 2                       |                                                                 |       |       |
| Total                       | 20                     | 11                      | 13                      |                                                                 |       |       |
| Week 52 crude rate          | 0.43%                  | 0.50%                   | 0.55%                   | 0.640                                                           | 0.414 | 0.450 |

\*Occurred before 48 hours after midnight of the first dose day or more than 48 hours after midnight of the last dose day (unless occurred within two weeks after last dose and was determined by GEC to be treatment-related).

with Table 5, which reflects the “Summary of CSUGIE Incidence – First Six Months,”

<sup>19</sup> Feinstein Report at ¶45.

<sup>20</sup> June 14, 2000 Medical Officer Review by James Witter, P. Ex. 15, at pp. 28-35.

<sup>21</sup> Statistical Reviewer Briefing Document for the Advisory Committee by Hong Laura Lu, P. Ex. 71, DEFS 03054471 – DEFS 03054492.

**Table 5. Summary of CSUGIE Incidence - First Six Months**

|                    | Celebrex<br>400 mg BID | Diclofenac<br>75 mg BID | Ibuprofen<br>800 mg TID | Log-Rank P Values for Celebrex<br>vs.<br>Diclofenac Ibuprofen Both |       |       |
|--------------------|------------------------|-------------------------|-------------------------|--------------------------------------------------------------------|-------|-------|
|                    | n=3987                 | n=1996                  | n=1985                  |                                                                    |       |       |
| No. of CSUGIEs     |                        |                         |                         |                                                                    |       |       |
| Uncensored         | 11                     | 9                       | 11                      |                                                                    |       |       |
| Censored*          | 2                      | 0                       | 2                       |                                                                    |       |       |
| Total              | 13                     | 9                       | 13                      |                                                                    |       |       |
| Week 26 crude rate | 0.28%                  | 0.45%                   | 0.55%                   | 0.264                                                              | 0.073 | 0.092 |

\*Occurred before 48 hours after midnight of the first dose day or more than 48 hours after midnight of the last dose day (unless occurred within two weeks after last dose and was determined by GEC to be treatment-related).

and thus to determine that the crude rates and p-values were different for the same comparisons at 6 and 12 months.<sup>22</sup> Similarly, it would also take but moments for one to conclude that Celebrex was not statistically significantly superior to diclofenac at either 6 or 12 months.<sup>23</sup>

It would take an analyst or investor even less time to review Table 6 of the Statistical Reviewer's Briefing Document, which reflects "CSUGIE Incidence in Patients not Taking Aspirin," for both the "Entire Study Period" and the "First 6 Months" and determine that, while there was a statistically significant result in favor of Celebrex for the "First 6 Months," that result was not statistically significant for the "Entire Study Period."<sup>24</sup>

<sup>22</sup> This addresses the allegedly omitted data points described in Points (1) and (2) on page 11, *supra*.

<sup>23</sup> This addresses the allegedly omitted data point described in Point (4) on page 12, *supra*. A further exposition of this allegedly omitted data point is contained Tables 6 and 7.

<sup>24</sup> This addresses the allegedly omitted data points described in Point (3) on page 11, *supra*.

**Table 6. CSUGIE Incidence in Patients not Taking Aspirin**

|                     | Celebrex<br>400 mg BID | Diclofenac<br>75 mg BID | Ibuprofen<br>800 mg TID | Log-Rank P Values for Celebrex<br>vs.<br>Diclofenac Ibuprofen Both |       |       |
|---------------------|------------------------|-------------------------|-------------------------|--------------------------------------------------------------------|-------|-------|
| Entire Study Period |                        |                         |                         |                                                                    |       |       |
|                     | n=3105                 | n=1551                  | n=1573                  |                                                                    |       |       |
| No. of CSUGIEs      |                        |                         |                         |                                                                    |       |       |
| Uncensored          | 8                      | 4                       | 10                      |                                                                    |       |       |
| Censored*           | 1                      | 0                       | 1                       |                                                                    |       |       |
| Total               | 9                      | 4                       | 11                      |                                                                    |       |       |
| Week 52 crude rate  | 0.26%                  | 0.26%                   | 0.64%                   | 0.972                                                              | 0.037 | 0.185 |
| First 6 Months      |                        |                         |                         |                                                                    |       |       |
|                     | n=3154                 | n=1567                  | n=1602                  |                                                                    |       |       |
| No. of CSUGIEs      |                        |                         |                         |                                                                    |       |       |
| Uncensored          | 5                      | 4                       | 10                      |                                                                    |       |       |
| Censored*           | 1                      | 0                       | 1                       |                                                                    |       |       |
| Total               | 6                      | 4                       | 11                      |                                                                    |       |       |
| Week 26 crude rate  | 0.16%                  | 0.26%                   | 0.62%                   | 0.476                                                              | 0.005 | 0.037 |

\*Occurred before 48 hours after midnight of the first dose day or more than 48 hours after midnight of the last dose day (unless occurred within two weeks after last dose and was determined by GEC to be treatment-related).

It would also take an analyst 30 seconds or less to recognize that, according to Table 3 of the Statistical Reviewer's Briefing Document, which reflects the "Summary of CSUGIE Incidence: Alternate Definitions," diclofenac had a lower crude rate of the incidence of CSUGIE's than Celebrex, according to the FDA's alternate definition of the primary endpoint.<sup>25</sup>

**Table 3. Summary of CSUGIE Incidence: Alternate Definitions**

|                    | Celebrex<br>400 mg BID<br>(n=3987) | Diclofenac<br>75 mg BID<br>(n=1996) | Ibuprofen<br>800 mg TID<br>(n=1985) |
|--------------------|------------------------------------|-------------------------------------|-------------------------------------|
| No. of CSUGIEs     |                                    |                                     |                                     |
| Uncensored         | 17                                 | 5                                   | 9                                   |
| Censored           | 2                                  | 1                                   | 1                                   |
| Total              | 19                                 | 6                                   | 10                                  |
| Week 52 crude rate | 0.43%                              | 0.25%                               | 0.45%                               |

In my personal experience reviewing, analyzing and digesting information from FDA briefing documents on dozens of occasions, the information at issue in this case could not have been presented in a more clear or accessible manner. As

<sup>25</sup> This addresses the allegedly omitted data points described in Point (5) on page 12, *supra*. Statistical Reviewer Briefing Document for the Advisory Committee by Hong Laura Lu, P. Ex. 71, DEFS 03054471 – DEFS 03054492 at DEFS 03054474.

demonstrated by the examples given immediately above, various summary tables in the briefing documents – which are the primary tables reviewed by securities analysts and investors – clearly and unequivocally conveyed the five allegedly omitted data points. In this light, Dr. Feinstein’s contention that it took the market three days to incorporate this information is absurd and reflects that fact that he has absolutely no practical experience or understanding of how market participants seek out and incorporate such information.<sup>26</sup>

Contemporaneous analyst reports make it indisputably clear that these allegedly omitted data points were, in fact, almost immediately understood and assimilated by the market – long before the market close on February 8, 2001. Specifically, a comparison of the allegedly omitted data points with the content of a February 7, 2001 report published by the J.P. Morgan team, of which I was a member, is set forth below in Table 1:

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<sup>26</sup> To dispel any notion that, due to my qualifications as an M.D. and a Ph.D., I was uniquely able to rapidly comprehend or digest information from FDA briefing documents, I note that many Wall Street pharmaceutical securities analyst teams had (and have) one or more members that were also either M.D.s or Ph.Ds. For example: Lenoard S. Yaffe of Bank of America Securities (M.D.), Steve B. Gerber of CIBC World Markets (M.D.), Lara Palevitz of PaineWebber (Ph.D.), Wayne G. Holman of Merrill Lynch (M.D.), Rodney Nathan of Bear Stearns (M.D.), Tony Butler of Lehman Brothers (Ph.D.). I should add that an advanced medical or science degree is not required to comprehend the FDA’s conclusions as recorded in a set of briefing documents, including the FDA’s review of the CLASS study.



**Table 1. Key Pharmacia Disclosures Reviewed in J.P. Morgan Report**

| <b>Allegedly Omitted Data Points Per ¶ 45 of The Feinstein Report</b>                                                                                                                                                                                                                            | <b>J.P. Morgan Report February 7, 2001<sup>27</sup></b>                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) Pharmacia did not disclose that “the entire study results were far less favorable to Celebrex than the publicly reported six-month results, as 6 of the 7 complicated ulcers occurring after the first six months of the CLASS trial were suffered by patients being treated with Celebrex.” | “The four main issues raised by the FDA are: (1) Pharmacia’s analysis of data at only the 26 week time point, rather than the 52 week time point, is unjustified and invalid ( <i>and the data is even less robust at 52 weeks</i> )” (emphasis mine) |
| (2) Pharmacia did not disclose that “the reported GI comparisons worsened after six months”                                                                                                                                                                                                      | “Because the event rates for diclofenac and ibuprofen plateaued after 26 weeks <i>but continued to rise for Celebrex, the differences between Celebrex and the comparators was less robust at the end-of-study time point.</i> ” (emphasis mine)      |
| (3) Pharmacia did not disclose that “the statistically significant benefit for Celebrex users not taking aspirin that Defendants reported based upon six months of data for complicated ulcers did not hold for the entire study period.”                                                        | “The statistically significant reduction in the primary endpoint (serious upper GI events) seen in the non-aspirin subgroup at 26 weeks is not statistically significant at 52 weeks.”                                                                |
| (4) Pharmacia did not disclose that “Celebrex failed to establish any statistically significant difference with diclofenac on any of the GI endpoints considered.”                                                                                                                               | “Celebrex failed to show any statistically significant benefit over one of the comparator NSAIDs (diclofenac).”<br><br>“Celebrex was not statistically superior to diclofenac on any measure at any point in any subgroup.”                           |

Moreover, the February 7, 2001 J.P. Morgan report contained a summary table of the topline data from CLASS, and again includes four out of the five allegedly initially omitted data points:

**Table 1: Statistical Significance in the FDA’s Analysis of the CLASS Trial**

| Comparator             | Time Point   | Population         | Primary Endpoint (POBs) | Secondary Endpoint (PUBs) |
|------------------------|--------------|--------------------|-------------------------|---------------------------|
| Ibuprofen + diclofenac | 26 weeks     | Total study        | Not significant         | p = 0.023                 |
|                        |              | Not taking aspirin | p = 0.037               | p = 0.017                 |
|                        | End-of-study | Total study        | Not significant         | p = 0.040                 |
|                        |              | Not taking aspirin | Not significant         | p = 0.020                 |
| Ibuprofen              | 26 weeks     | Total study        | Not significant         | p = 0.005                 |
|                        |              | Not taking aspirin | p = 0.020               | p < 0.001                 |
|                        | End-of-study | Total study        | Not significant         | p = 0.017                 |
|                        |              | Not taking aspirin | p = 0.037               | p < 0.001                 |
| Diclofenac             | 26 weeks     | Total study        | Not significant         | Not significant           |
|                        |              | Not taking aspirin | Not significant         | Not significant           |
|                        | End-of-study | Total study        | Not significant         | Not significant           |
|                        |              | Not taking aspirin | Not significant         | Not significant           |

Source: FDA Medical Officers Review

<sup>27</sup> February 7, 2001, J.P. Morgan Securities Inc., “FDA Review of Celebrex More Negative Than Expected—Panel Could Be Controversial,” DEFEX 003862 – DEFEX 003865.

As noted, the “Source” for this table was “FDA Medical Officers Review.” It is plain from the content of the J.P. Morgan report that it did not take three days for the market to digest and assimilate the five allegedly omitted data points from the FDA briefing documents. In that regard, it is critical to note that, although the J.P. Morgan report is dated February 7, 2001, it was prepared on February 6, 2001 and published prior to the market open. More importantly, the information in the report had already been communicated to traders, the sales force and clients (*i.e.*, investors and money managers, certainly including those hired by the Plaintiffs) during the course of the day on February 6, 2001. This process of analyzing the briefing documents, drawing conclusions about the likely impact on Pharmacia, and communicating that information to investors occurred in parallel at each of the 20 or more brokers that covered Pharmacia (and, to a lesser extent, Pfizer and Merck). Though records of intraday communications between analysts and investors are not available at this time (ten years after the event), I can state with a high degree of confidence that the sell-side analyst teams covering Pharmacia, of which there were at least twenty, issued and discussed with investors their views on the briefing documents intraday February 6, and furthermore, many Pharmacia investors would themselves have reviewed the briefing documents.<sup>28</sup> Thus, if one were to take an extremely conservative position and rely solely on analyst reports as a gauge of when information was fully disseminated to the market, the time when the analyst reports were published would reflect the latest point at which the information contained in the

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<sup>28</sup> For example, Ira Loss, an analyst at Washington Analysis, a boutique research firm, was quoted as viewing the chances of a major label revision as small in a Reuters article published mid-day on February 6, 2001. Reuters News, February 6, 2001, “HD Update 1-Safety of popular arthritis drugs under US review.” (“Ira Loss, a drug industry analyst with Washington Analysis, said the FDA’s reviews made him skeptical that the agency would support a major revision. ‘I don’t see what’s in it for the FDA to make a big change in the [Celebrex] label.’”)

report could be said to have been incorporated into the price of Pharmacia stock. However, based on my experience regarding how sell-side analysts communicate with investors, it is my opinion that long before the time a formal analyst report was published the information would have been already incorporated into the price of Pharmacia stock.<sup>29</sup> And, as I will demonstrate below with empirical data, the information contained in Advisory Committee briefing documents is, in fact, assimilated by the market almost instantaneously.

The J.P. Morgan report reflects my experience, and my expert opinion based on that experience, that the dissemination of the information contained in Advisory Committee briefing documents is immediate; the lack of response in the market (as indicated by Pharmacia's stock price as shown below) to the intraday release of the briefing documents on February 6 is consistent with only one interpretation – that market participants, upon digesting the previously undisclosed results of the CLASS study, and the FDA's review of the study, found nothing material.

**c. The FDA Review Was Of Far Greater Interest Than  
The Newly Released CLASS Data**

A third issue plaguing Dr. Feinstein's argument is that his lack of practical experience leads him to incorrectly presume that market observers were more interested in, and placed more emphasis on, specific data-points from CLASS than on the overall conclusions of the FDA reviewers. When analysts and investors review briefing

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<sup>29</sup> It is also important to note that in its presentation of the FDA review, including the initially undisclosed CLASS results, J.P. Morgan acknowledged that although "this meeting is not likely to be clear sailing for Celebrex" and "the degree of label improvement may be less dramatic than hoped," they "still view similar label revisions for both products [Celebrex and Vioxx] . . . as the 'most likely' outcome." February 7, 2001, J.P. Morgan Securities Inc., "FDA Review of Celebrex More Negative Than Expected—Panel Could Be Controversial," DEFEX 003862 – DEFEX 003865 at DEFEX 003863.

documents their primary interest is in assessing the direction and nature that the subsequent day's Advisory Committee discussion will take given the FDA's review of the submitted data and the questions the FDA will post to the Committee members; for example, the likelihood of a recommendation for or against FDA approval of the request being made in the applicable NDA. This interest is best informed by examining the FDA reviewers' views on the topline data, and their conclusions and recommendations, rather than trying to digest a broad range of specific data points that contribute, to a greater or lesser extent, to the reviewer's conclusions and recommendations. The data are subsumed in, and to a certain extent, rendered irrelevant by the FDA's conclusions and recommendations. Therefore, when faced with freshly disclosed briefing documents, it is possible to gauge the tenor of the FDA review and understand the critical issues within minutes. Although further review of the documents and, specifically, the data and results themselves over several hours may reveal additional information of relevance, it would be extremely unusual to find material information buried in the FDA reviews that was not addressed up-front by the FDA reviewers in their summaries and conclusions.

**d. The Content Of Analyst Reports Does Not Support Dr. Feinstein's Claim That Analyst-Driven Dissemination of the CLASS Results Took Three Days**

Dr. Feinstein contends that the propriety of using a 3-day window is supported by the fact that analysts published reports on February 7 and 8, 2001 discussing the Advisory Committee meetings for Celebrex and Vioxx:

[I]n this case, several analyst reports that facilitated the processing and dissemination of the new information about Celebrex that was released on 6 February 2001 and 7 February 2001 were published on 8 February 2001. The time required for analysts to digest the new information speaks to the complexity and volume of the information.



Moreover, the time required by analysts to write and distribute their reports extended the time it took the market to fully comprehend the import of the new information.<sup>30</sup>

But, again, Dr. Feinstein is wrong because he elides the distinction between the “processing and dissemination” of the *five allegedly omitted data points* and the “processing and dissemination” of the developments at the Arthritis Advisory Committee meetings for Celebrex and Vioxx on February 7 and 8, 2001, respectively, and commercial implications thereof for Pharmacia – which are the subject of the February 8, 2001 analyst reports. In fact, while many analyst reports and notes issued from February 7-9, 2001 made mention of the CLASS study and a few present some summary results, I can identify only a single report that discusses the initially undisclosed CLASS results—the J.P. Morgan Analyst Report that was prepared on February 6 and published prior to the market open on February 7.<sup>31</sup>

I have reviewed nineteen analyst notes and reports regarding Celebrex dated February 7-9, 2001.<sup>32</sup> Almost all of the notes mention the FDA review of and Advisory Committee meeting for Celebrex and the CLASS results in general, and half make explicit mention of the failure of CLASS to achieve its primary endpoint (with several indicating this as having been the key factor in Advisory Committee vote). In striking contrast, only one note, the previously mentioned J.P. Morgan report (published prior to the market open on February 7) provides any discussion of the initially undisclosed CLASS results, indicating that analysts for the most part found these initially

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<sup>30</sup> Feinstein Report at ¶168.

<sup>31</sup> February 7, 2001, J.P. Morgan Securities Inc., “FDA Review of Celebrex More Negative Than Expected—Panel Could Be Controversial,” DEFEX 003862 – DEFEX 003865.

<sup>32</sup> These nineteen documents represent every analyst note and report regarding Celebrex dated February 7-9, 2001 that I was able to obtain. The nineteen documents are identified in Appendix C.

undisclosed CLASS too insignificant to bother mentioning, much less discussing in detail. Yet the Plaintiffs allege these results were material and the cause of a significant Pharmacia price decline over three days, and Dr. Feinstein claims these results were so complex that “the time required by analysts to write and distribute their reports extended the time it took the market to fully comprehend the import of the new information.”<sup>33</sup> On the contrary – the analyst reports can in no way be said to have “extended the time it took the market to fully comprehend the import of the new information” because the analyst reports *do not even mention or discuss* the new information – i.e., the five allegedly omitted data points.<sup>34</sup> Further undermining the plausibility of Dr. Feinstein’s concept is the fact that a single aspect of the initially undisclosed data – that Celebrex was statistically superior to ibuprofen – is mentioned in two notes as a positive result that could potentially make its way to the Celebrex label.<sup>35</sup>

To reiterate – not one of the reports cited by Dr. Feinstein discloses, refers to, analyzes or in any way discusses any of the five allegedly omitted data points upon which Plaintiffs’ claims are based, a fact directly contradicting Dr. Feinstein’s assertion that “several analyst reports that facilitated the processing and dissemination of the new information about Celebrex that was released on 6 February 2001 and 7 February 2001 were published on 8 February 2001.”<sup>36</sup> In particular, none of the February 8, 2001 analyst

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<sup>33</sup> Feinstein Report at ¶ 168.

<sup>34</sup> In my opinion, this fact simply reflects the fact that the newly disclosed results were viewed as immaterial by the sell-side analysts that were following the COX-2 inhibitor Advisory Committee meetings.

<sup>35</sup> February 8, 2001, Credit Suisse First Boston, “No Change Recommended for Celebrex Labeling” and February 8, 2001 Salomon Smith Barney Analyst Report “Vioxx & Celebrex at FDA (Day 2).”

<sup>36</sup> Feinstein Report at ¶ 168.

reports discuss anything new about the CLASS data; rather, the February 8 reports published in the morning are focused on the outcome of the Celebrex Advisory Committee meeting, and those published in the afternoon or night are focused on the outcome of the Vioxx Advisory Committee meeting. The very idea that analysts would still be writing about a handful of specific data points from the CLASS study after the Advisory Committee had voted against a potential label change for Celebrex is ludicrous, as is Dr. Feinstein's claim that analyst reports released on February 8 "facilitated the processing and dissemination of the new information about Celebrex"<sup>37</sup> when those reports in fact contain no mention whatsoever of the initially undisclosed CLASS results.<sup>38</sup>

Ultimately, Dr. Feinstein is confounded by his lack of appreciation of how analysts and the markets for pharmaceutical stocks operate. The relevance of the briefing documents to investors ended once the Advisory Committee meeting was underway; at that point, the discussion amongst Pharmacia, the FDA and the Committee members was more relevant. Analyst notes and commentary published intraday, or after the close, February 7 and prior to the open February 8 were focused on the Celebrex Advisory

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<sup>37</sup> *Id.*

<sup>38</sup> Moreover, Dr. Feinstein's reliance on analyst reports from February 8, 2001 to support his three day proposal further underscores the gross error he makes by not considering the Advisory Committee's vote on February 8, 2001 to recommend the inclusion of safety data from Merck's VIGOR trial on the Vioxx label as confounding information (which will be discussed in detail below). Not only does Dr. Feinstein completely ignore the implications for Pharmacia's stock price of the Arthritis Advisory Committee's decision regarding the Vioxx label, he actually relies upon the very analyst reports which, by discussing those implications as potentially detrimental to Pharmacia, reveal his decision to ignore the confounding effect of the Advisory Committee vote for Vioxx to be a farce. The primary focus of the analyst reports published February 8, 2001 after the Vioxx Advisory Committee vote is on Merck and Vioxx and the competitive position of Celebrex in light of the Advisory Committee vote in favor of a label change for Vioxx, as discussed in more detailed below.

Committee meeting and the vote against recommending a label change for Celebrex. Similarly, commentary and notes published intraday February 8 and prior to the open on February 9 focused on the Vioxx Advisory Committee meeting and vote in favor of a label change for Vioxx. His depiction of analyst commentary relating to the previously undisclosed data rolling out over a three day period is, once again, a figment of his imagination, and contradicted by the very content of analyst notes and reports he relies upon.

Accordingly, the fact that analysts published reports on February 7 and 8, 2001 reported on the results of the two Advisory Committee meetings has no bearing on the question of how long it took the market to assimilate the five corrective data-points in the briefing documents; the lack of explicit reference of any kind to those data points in the analyst reports underscores that analysts viewed these newly disclosed data as irrelevant.

**2. Stock Price Movements in Response to Advisory Committee Briefing Documents and Meetings Are Confined to a Single Day**

FDA Advisory Committee meetings are one of several kinds of events creating volatility and trading opportunities in stocks and are carefully followed by investors, analysts and the financial media. Because, as discussed above, the meeting dates are known well in advance, market participants can be extremely well prepared for the possible outcomes, although many times the outcomes are difficult to predict. It is my personal experience that stock price changes in response to the posting of briefing documents is extremely rapid and cannot in any way be said to extend over a three day period. Below, I will supplement my experience-driven opinion with quantitative data.



The FDA Advisory Committee meetings that are typically of high interest to investors relate to New Drug Applications (“NDAs”), since the potential approval of a new drug may be highly material to the business of the company in question. When a company has an important drug being reviewed at an Advisory Committee, prior to the meeting, the price of the company’s stock represents, at least in part, the sum of investor sentiment, which could be almost unanimous in expecting success or failure, or could be more equally split (for this reason, biotechnology stocks represent a particularly pure environment for studying the market response to Advisory Committee reviews since the value of these companies in the stock market is often determined by a single drug; thus, the meeting outcome can almost entirely determine the value of the company). Although investor interest in such reviews is always high, a meaningful price move in response to the briefing documents or Advisory Committee hearing itself is generally triggered by an outcome that differs substantially from expectations or, alternatively, when there is significant uncertainty regarding the outcome of the meeting (*e.g.*, when sentiment is strongly positive or negative and the Advisory Committee review goes the other way, or when sentiment is mixed and the Advisory Committee review establishes the outcome).

Dr. Feinstein’s construct holds that it took three days to incorporate into Pharmacia’s stock price just a handful of twelve month data points, February 6, the day of the disclosure, February 7, the day of the Advisory Committee review of CLASS and the release of the Vioxx briefing documents, and February 8, the day of the Advisory Committee review of VIGOR. I have already explained in my initial expert report of June 7, 2011 that these must be viewed as three separate events affecting Pharmacia’s stock, and that the curative disclosure occurred on, and was complete on, February 6, 2001. February 7 and 8 each represent distinct events, in which the market assimilated

new information completely distinct from the curative disclosures of February 6; namely, the Advisory Committee review of Celebrex on February 7 with the Advisory Committee vote not to recommend any label change for Celebrex and the disclosure of the FDA's views on the VIGOR study of Vioxx, then the February 8 Advisory Committee review of Vioxx and vote in favor of the VIGOR data being included on the Vioxx label.<sup>39</sup> To reiterate – Dr. Feinstein's proposal of a three day reaction to the relatively small amount of data new to the market in the Celebrex briefing documents bears no semblance to the reality of how the market actually reacts to Advisory Committee briefing documents and meetings.

In order to address Feinstein's three day proposal, I undertook a study of stock price reactions to Advisory Committee briefing documents and votes for 2001 through 2010. My study demonstrates, unequivocally that:

1. Stock price changes in response to the posting of briefing documents are completely distinct from stock price changes in response to the subsequent Advisory Committee meetings; the market views these as discrete events;
2. Stock price changes to either event (release of briefing documents or the Advisory Committee meeting) are confined to a single trading day, with no suggestion of a three or even two day reaction to a single event;
3. The pattern of Pharmacia's stock price change over February 6-8, 2001, in which the majority of the decline came on the third day following the release of the briefing documents, is inconsistent with the typical pattern of stock price changes responding to the posting of the briefing documents and holding of the Advisory Committee hearing, indicating an external factor drove the February 8 decline; and

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<sup>39</sup> To be abundantly clear, the events of February 7 and 8 are not only separate and distinct from the events of February 6, but they are also separate and distinct events vis-à-vis each other.

4. Intraday stock price movements in response to the release of briefing documents demonstrate that the market immediately assimilates the newly disclosed information.

To conduct this study I created a sample set of companies (restricted to companies with US stock listings) applying for FDA approval of new drugs that would be important for the applicant company, and then eliminated those cases in which I could not identify the date on which the briefing documents were posted. I also eliminated those cases in which there was no stock volatility around the Advisory Committee, as I was specifically interested in a sample in which a changing stock price could be identified and correlated with the release of briefing documents and/or the Advisory Committee meeting itself. Not unexpectedly, the sample consists mainly of biotechnology stocks, for which Advisory Committee meetings tend to be highly material, though it includes some pharmaceutical companies as well. The sample includes 39 stocks, covering 34 Advisory Committee meetings (some meetings discuss more than one drug application).

A couple of introductory points are in order. First, although each Advisory Committee meeting in my sample set concerned a different product and a different set of data about that product, all of the samples involved complex clinical, scientific and statistical issues (regarding drugs or biotechnology products) no less complicated in degree from those presented by the CLASS trial. Second, the magnitude of the stock price moves is not of particular interest for the purposes of this study (we fully expect that for biotechnology companies, the price changes will be large); rather, we are interested in the *pattern*, that is, on what days the price changes occur and in response to what information, is there any evidence that the market reaction to briefing documents is extended beyond a single trading day, and does the pattern observed for Pharmacia

match the pattern observed for other stocks. The magnitude of the stock price change reflects how important the approval of the particular drug under review (or supplemental approval of an already approved drug) is to the company; clearly for biotechnology companies seeking their first product approval, the materiality is much greater (and hence the stock volatility much larger) than for our case, a supplemental approval for an already successful drug sold by a diversified pharmaceutical company.

The figures included in the following pages include stock price/return information for the sample set companies in the following categories: The baseline stock price is set as the closing price on the day prior to the posting of the briefing documents (*e.g.*, in our case, that corresponds to February 5, 2001). The next data point is the percentage change at the market close on the day the briefing documents are posted (*e.g.*, in our case, that corresponds to February 6).<sup>40</sup> The next data point represents the return on the day prior to the Advisory Committee, assuming that there was an interim day – however in many cases, including our case, the day that the briefing documents are posted *is* the day prior to the Advisory Committee meeting, so in these cases no return is calculated for the day prior to the Advisory Committee. The subsequent day on the chart represents the return generated at the first close after the Advisory Committee meeting

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<sup>40</sup> For clarity, I note that it is my contention that the Pharmacia stock price change on the day the briefing documents were posted (February 6, 2001) represents the only day in which a change in stock price could potentially be attributed to the disclosure of the information in the briefing documents.

has concluded (*e.g.*, in our case, that corresponds to February 7, 2001).<sup>41</sup> Finally, the last time point on the chart is the return at the close of the subsequent trading day.<sup>42</sup>

In looking at the pair of discrete events comprising an Advisory Committee meeting, (*i.e.*, first, the posting of the briefing documents on the FDA website, and subsequently the Advisory Committee public hearing and the Committee vote at the close of the public hearing), it is apparent that there are a limited number of patterns. The briefing documents and Advisory Committee recommendation can both be negative (meaning, both go against the desired drug or labeling approval), which is the pattern observed in the review of the CLASS results. Conversely, the briefing documents and Advisory Committee recommendation can both be positive, that is, supporting approval. Sometimes, the documents and Advisory Committee can be reversed (that is, negative documents but an Advisory Committee vote for approval, or the reverse), and other times the briefing documents are mixed and do not give a strong sense for what the FDA's position is. Of the 39 total events, in 19 events the Advisory Committee briefing documents and the Advisory Committee vote matched directionally (in 12 cases both were negative and in 7 cases both were positive) and in only four events did the Advisory Committee vote represent a true reversal of the position espoused by FDA reviewers in the briefing documents. For the remaining 16 events, either the briefing documents or the

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<sup>41</sup> Because many biotechnology stocks are halted on the day of an Advisory Committee review, and other times the Advisory Committee meeting ends (or voting occurs) after the close, in those cases this return is calculated using the close on the trading day after the Advisory Committee actually met.

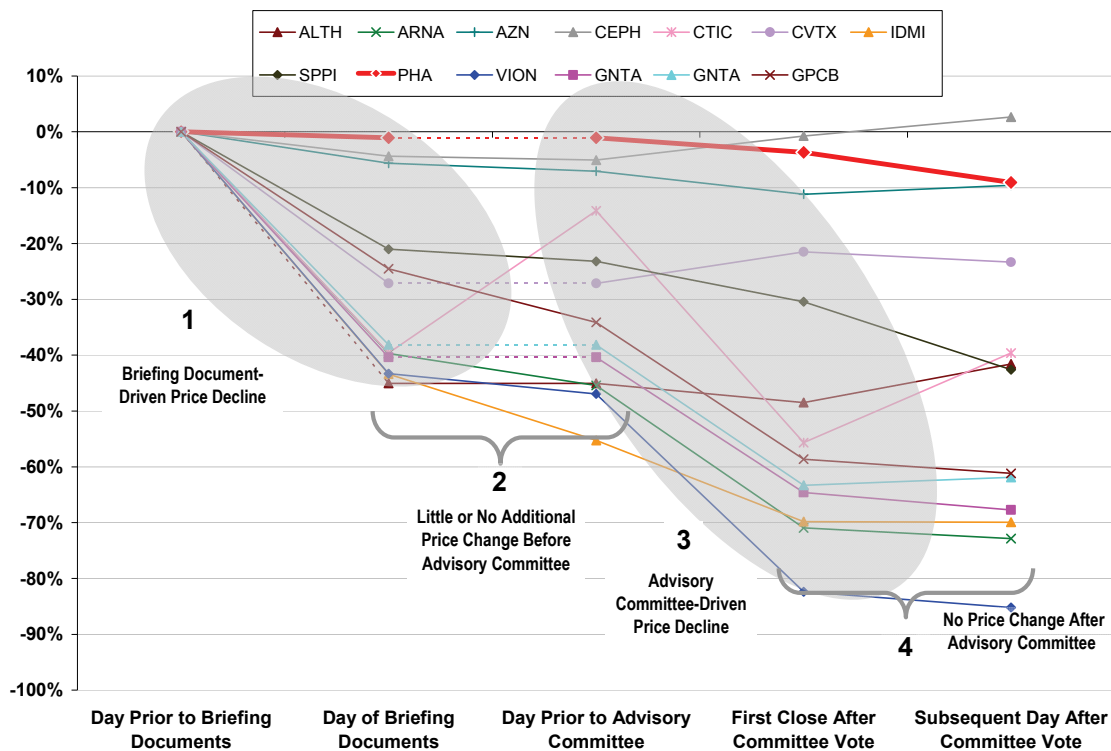
<sup>42</sup> I should note that I did not perform a detailed event study in an attempt to exclude confounding events, although, again, for the majority of examples in the sample set, any other information in the market would have been insignificant in comparison to an FDA Advisory Committee vote on their first potential drug approval.



Advisory Committee vote was mixed. In Appendix A, we provide several representative examples of stock reactions to Advisory Committee briefing documents/meetings.

Figure 1 below illustrates the returns, measured by the percentage of stock price movement, over the trading days described above, for those cases in which the briefing documents and the Advisory Committee vote were both negative. For those cases in which there was no interim day between the day the briefing documents were posted and the Advisory Committee meeting (*i.e.*, there was no interim day), a dashed line indicates that no price change could have occurred for this period.

**Figure 1. Stock Returns When Briefing Documents and Advisory Committee Results are Negative**



There are several observations that will be further explored below. First, as reflected in the shaded area labeled “1,” unlike in the case of Pharmacia, the posting of briefing documents with negative information causes an immediate and substantial decline in the

stock price. Second, the interim day return, indicated by the area labeled “2” on the figure, is quite small relative to the briefing document driven price decline. Third, marked by the shaded area labeled “3,” there is an independent stock price reaction to a negative Advisory Committee vote distinct from the stock price decline driven by the release of the briefing documents. Fourth, there is no additional stock price move subsequent to the Advisory Committee vote, as indicated by the shaded area labeled “4.”

Focusing not on the magnitude of price change, understandably larger for biotechnology companies in which the Advisory Committee meeting is in reference to their only product, we can see that a large portion of the negative return, or price decline, generated by these stocks over this period is caused by the disclosure of the briefing documents – in contrast to the insignificantly small price movement for Pharmacia on February 6, 2001. When there is an intermediate trading day (after the briefing documents and before the Advisory Committee meeting, not the case for Pharmacia), there is little change in the stock prices. If, as Dr. Feinstein hypothesizes, it took the market time to digest “complex” information from the negative briefing documents one would expect to see the briefing document driven price decline carried over into the next day. The second large decline in stock prices is driven by the Advisory Committee meeting itself, and clearly, the day after the Advisory Committee (corresponding to February 8, 2001 for Pharmacia) there is no additional meaningful price movement – this too stands in sharp contrast to the behavior of Pharmacia’s stock, which showed a relatively large decline only on the day after its Advisory Committee meeting. As will be discussed in further detail below, Pharmacia’s deviation from the typical pattern of stock movements can be explained by the development of an unrelated material adverse event

on February 8, 2001 – the February 8, 2001 Advisory Committee Meeting regarding Vioxx – a characteristic not shared by the other stocks in this sample.

**a. Briefing Document-Driven Stock Reactions**

In this sample, the mean and median returns on the day the briefing documents were posted are  $\pm 21\%$  and  $\pm 17\%$ , respectively (calculated by using the magnitude of the return, regardless of the direction). In the 12 examples in which the briefing documents and Advisory Committee vote were both negative (corresponding to the Pharmacia case), mean and median returns on the day the briefing documents are posted are  $-31\%$  and  $-39\%$ . For the seven examples in which both events were positive, mean and median returns on the day the briefing documents are posted are  $27\%$  and  $21\%$ . Looking at all 19 examples in which the briefing documents and Advisory Committee vote were directionally the same (either both negative or both positive), mean and median returns on the day the briefing documents are posted are  $\pm 30\%$  and  $\pm 21\%$  (using the absolute value of the return to calculate mean and median).

In stark contrast, Pharmacia's stock price change on the day the briefing documents were posted was  $-1.1\%$ . Again, the point is not to compare the magnitude of the Pharmacia return to these averages, but rather to understand the typical distribution of returns over the multi-day, multi-event phenomenon that is an Advisory Committee review. This  $1.1\%$  ( $\$0.63$ ) decline in Pharmacia's stock price (not a statistically significant change according to Dr. Lehn<sup>43</sup>) on February 6, 2001, the day the Celebrex briefing-documents were posted, represents just  $12\%$  of the total loss of  $\$5.28$  in Pharmacia's shares from the close on February 5, 2001 ( $\$58.28/\text{share}$ ) until the close on

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<sup>43</sup> Kenneth M. Lehn, Expert Report Concerning Materiality, Loss Causation and Damages, June 7, 2011 at ¶¶ 12, 61, 70-74. ("Lehn Report")

February 8, 2001 (\$53.00/share)<sup>44</sup>. This is in striking contrast to the other comparable historical examples, where the change in stock price in response to the briefing documents constitutes 65% of the total return earned over the comparable time frame for the examples in which both documents and Advisory Committee were negative, and 54% of the total return for the examples in which both documents and Advisory Committee were positive.

Thus, we can conclude that the market response to the information within briefing documents typically captures over half the return (or change in stock price), positive or negative, that a stock will generate over the course of the independent events comprising an Advisory Committee review. The burden is on the Plaintiffs to explain why Pharmacia should have deviated from this pattern, with the response to the briefing documents constituting such a small price move. Dr. Feinstein has offered none. Of course, there is a readily apparent explanation: the Pharmacia pattern is highly consistent with the fact that the information in the Celebrex briefing documents posted on February 6, 2001, including the fully curative disclosure of the full CLASS results, and the FDA's negative view on the Defendants' six month analysis, was not viewed as material by the market.

**b. The Day After, Part 1 – Stock Price Changes Between the Briefing Documents and Advisory Committee**

As mentioned earlier, the FDA typically posts briefing documents to its website one to two days prior to the Advisory Committee meeting. This means that in some cases, there is a trading day between these two events – a day in which the briefing

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<sup>44</sup> To be completely clear: Pharmacia's stock declined by \$5.28 (9.1%) over the course of February 6-8, 2001. The decline of \$0.63 of February 6, 2001 accounts for 12% of the decline (\$0.63 is 12% of \$5.28).

document materials can be further reviewed and digested ahead of the following day's Advisory Committee meeting. There was no such intermediate day for Pharmacia in this case; the documents were posted in the morning of February 6, 2001 and the Advisory Committee meeting began prior to the market open the next morning.

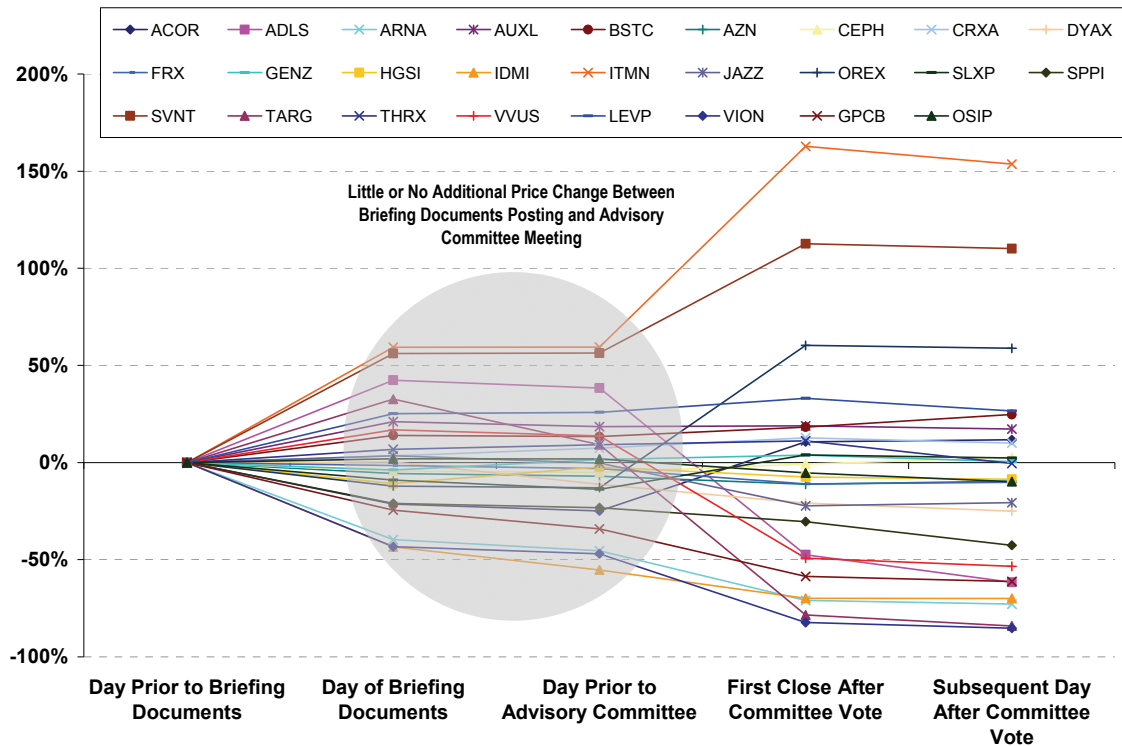
If Dr. Feinstein's theory is correct that the information contained in FDA Advisory Committee briefing documents is "complex, voluminous, and irregular" and that it takes "some time for the market to process the new information,"<sup>45</sup> then this intermediate day should be one in which the continued "processing" of information from the briefing documents into the market continues to affect the stock price of the company whose drug is up for Advisory Committee review. However, the data unequivocally show that there is not any meaningful continued "processing" of the briefing documents – there is little change in the stock price on the day after the briefing documents are posted. Figure 2 shows the returns only for those examples in which there was a trading day separating the posting of the briefing documents and the advisory committee meeting.

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<sup>45</sup> Feinstein Report at ¶ 73.



**Figure 2. Stock Returns in Cases in Which an Intermediate Trading Day Occurs Between the Briefing Documents and Advisory Committee Meeting**



For the entire sample of 26 instances in which there was trading day between the day that the briefing documents were released and the day of the Advisory Committee hearing (shown in the grey area on the chart), the mean and median magnitude of the stock price change on that day were just 5% and 3%, respectively, compared to a mean and median magnitude of price change in response to the briefing documents of 20% and 15%, respectively. In ten of the 26 examples, the stock price change in the day after the briefing documents were posted was in the opposite direction of the prior day's stock price change. These data, as illustrated in Figure 2 above constitute potent, empirical evidence that Dr. Feinstein's theory that it takes the market multiple days to understand the "complex, voluminous, and irregular"<sup>46</sup> information contained in Advisory

<sup>46</sup> *Id.*

Committee briefing documents is simply wrong. If his view had any basis in reality, then there should be continued stock price movement on the day after briefing documents are posted, reflecting the market's ongoing digestion of the material contained in the briefing documents. Instead, there are small and dramatically reduced stock price excursions on the day after the briefing documents were made public (and frequently in the opposite direction of the prior day's move). Of course, Dr. Feinstein is forced to take a position that the market needed three days to process the Celebrex briefing documents because by far the largest Pharmacia price move came on February 8, 2001, the third trading day after the curative disclosures.

**c. Advisory Committee-Driven Stock Reactions**

In this sample, the mean and median magnitude of return as of the first close after the Advisory Committee meeting are  $\pm 28\%$  and  $\pm 22\%$ , respectively. Excluding the four examples in which the Advisory Committee outcome was reversed from what would have been expected from the briefing documents, on average the stock price move generated by the Advisory Committee review is approximately half that of the entire stock price move from the close prior to the posting of the briefing documents. From an investor's perspective, that makes sense – the briefing documents are not a perfect predictor of the Advisory Committee outcomes, and in the dynamics of the Advisory Committee meeting, a company may end up faring better or worse than what the briefing documents might imply. Thus, after the briefing documents are released, market participants will continue to buy and sell based on their assessment of the possible outcomes of the Advisory Committee meeting and, of course, based on their perception

of the risk-reward since the stock price has most likely changed, perhaps dramatically, since before the briefing document information was released.

In our case, Pharmacia's stock declined \$1.52 or 2.6% (also not a significant change according to Dr. Lehn<sup>47</sup>) on February 7, the day of the Advisory Committee. In contrast to the other examples, in which half of the overall price change was driven by the Advisory Committee, this accounts for just 29% of the \$5.28 that Pharmacia's stock declined over February 6-8, 2001. Dr. Feinstein's theory would attribute Pharmacia's loss on February 7, 2001 to the ongoing assimilation by the market of the handful of CLASS results that Plaintiff's allege were material and disclosed on February 6. I have already presented substantial evidence arguing against the possibility that the market takes even two days to process Advisory Committee briefing documents. To that, I will add the additional observations that on February 7, the Advisory Committee voted not to recommend a label change for Celebrex, which was a disappointing outcome from the meeting. Also, prior to the market open on February 7, the briefing documents for Merck's Vioxx Advisory Committee meeting were posted to the FDA website.<sup>48</sup> In those briefing documents, the FDA reviewers recommended against a label change for Vioxx. It is likely that this too was confounding information that negatively affected the price of Pharmacia stock. Specifically, the fact that the FDA reviewers recommended against a label change for Vioxx, even though the VIGOR trial, unlike CLASS, had met its primary endpoint, would have implications on Celebrex's chances for obtaining a label change.

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<sup>47</sup> Lehn Report at ¶¶ 12, 75 – 82.

<sup>48</sup> February 7, 2001, Bloomberg News, "Merck's Vioxx Safety Warning Should Remain, FDA Review Says" (reflecting time stamp of 09:03:51).

**d. The Day After, Part 2 – Stock Price Changes the Day Following the Advisory Committee**

A claim central to Dr. Feinstein's argument is that the Pharmacia price decline on February 8, 2001, a drop of \$3.13 or almost 6% (and representing 59% of the Pharmacia stock price decline over his three-day period of February 6-8, 2001) was driven by the curative disclosure of the full CLASS results two days earlier, on February 6, 2001.<sup>49</sup> I explained at length in my expert report submitted June 7, 2011 (and summarized below) the price decline on February 8, 2001 can only be viewed as resulting from the February 8, 2001 Advisory Committee vote to recommend inclusion of the VIGOR comparative GI safety data on the Vioxx label. The behavior of other stocks after Advisory Committee meetings provides further refutation of Dr. Feinstein's theory.

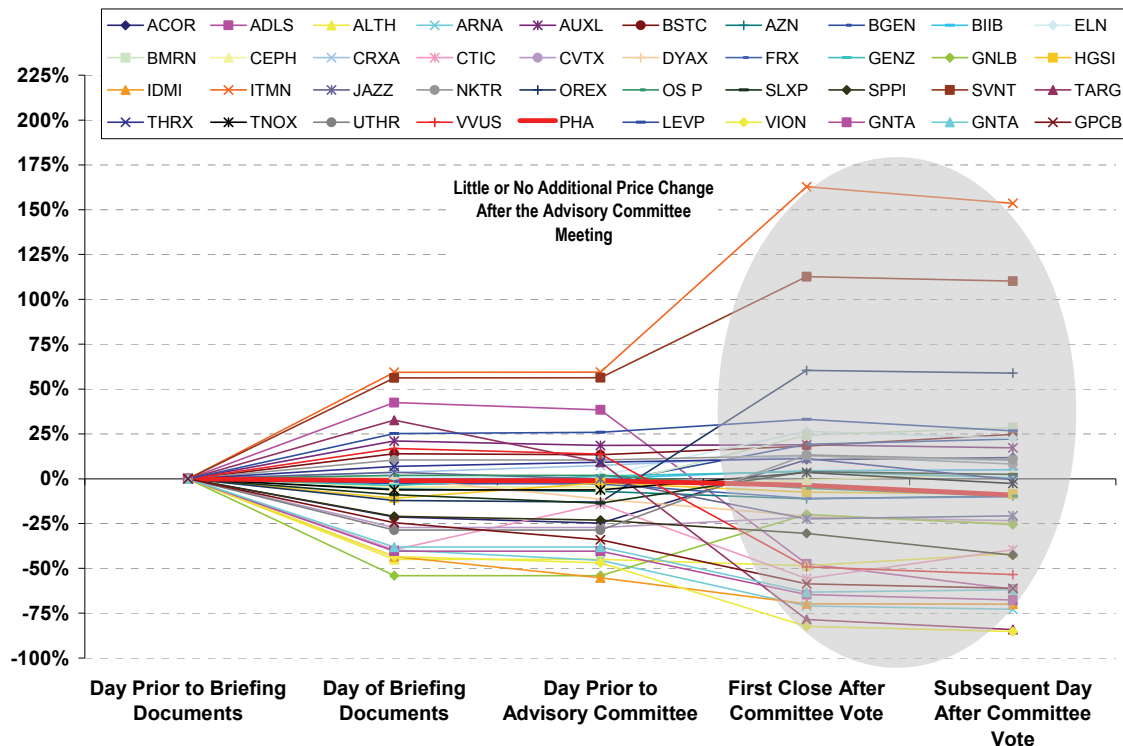
The mean and median magnitude of stock price change in this sample, from the last close of trading prior to the briefing documents being posted, until the first close of trading after the Advisory Committee vote, are  $\pm 36\%$  and  $\pm 22\%$ , respectively. If one includes the subsequent trading day in order to calculate the magnitude of the stock price change, the result is virtually unchanged, with a mean and median magnitude of stock price change of  $\pm 36\%$  and  $\pm 25\%$ . In other words, there is no additional return to even contemplate attributing to the briefing document disclosures and Advisory Committee meeting the day after the first market close after the Advisory Committee. As illustrated in Figure 3 below, specifically in the area highlighted in grey, in our entire

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<sup>49</sup> See, e.g., Feinstein Report at ¶¶ 195 – 203, 245 – 255.

sample, stock prices demonstrate almost no meaningful, directional movement the day after an Advisory Committee meeting.<sup>50</sup>

**Figure 3. Stock Price Changes One Day After Advisory Committee Meetings**



For the entire sample, the mean daily return on the day following the first post-Advisory Committee close is -3%, and in just 18 of the 39 stocks studied was the stock price movement on the second day in the same direction as the movement generated on the prior day because of the Advisory Committee meeting.

The contrast with Pharmacia is striking. One would expect, based on the empirical data presented, to have seen little or no price change in Pharmacia's stock on February 8, 2001, the day after the Celebrex Advisory Committee meeting. But instead,

<sup>50</sup> Again, in the case of biotechnology stocks that do not trade on the day of the Advisory Committee, or cases in which the Advisory Committee vote occurs after the close, this represents the second day after the meeting.



Pharmacia's stock dropped by \$3.13 or almost 6% (a statistically significant decline<sup>51</sup>) – this accounts for 59% of the \$5.28 decline if Pharmacia's stock price from February 6-8, 2001. Again, the onus is on Dr. Feinstein to account for this stock price decline that deviates so dramatically from the expected behavior of a stock after an Advisory Committee meeting. And again, the only answer he can provide in order to create the illusion of loss causation, materiality and damages, is that this stock price decline must have been related to the February 6, 2001 curative disclosure that took three full trading days to become incorporated in Pharmacia's stock price. Consistent with the empirical data that I have presented, this price decline was driven by a materially negative development for Pharmacia on February 8, 2001, completely unrelated to the initially undisclosed CLASS results.

**e. Examining the Pattern of Pharmacia's Stock Price Movement**

The usual behavior of biotechnology and pharmaceutical stocks across the individual days of the briefing document-Advisory Committee sequence of events has provided empirical *evidence* contradicting Dr. Feinstein's *theory* that it takes three days for the market to "process" the information contained in FDA Advisory Committee briefing documents. The results presented suggest that each event (the briefing document release and the Advisory Committee meeting) is discrete, separate and contained, and that there is no ongoing response carrying over into a second or third trading day. This finding becomes even more apparent when comparing the performance of Pharmacia's stock over the several days comprising the Advisory Committee and related events to the pattern established by other stocks navigating these same waters. For these analyses, the

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<sup>51</sup> Lehn Report at ¶¶ 83 – 87.

comparator groups are those examples in which the briefing documents and Advisory Committee outcomes were similar (either both negative or both positive), or those in which both events were negative.

Figure 4 below charts the performance of Pharmacia stock versus the average performance of the other stocks in which negative briefing documents were followed by a negative Advisory Committee meeting – that is, the grey line represents the average stock price movement of a composite of the twelve individual stocks (other than Pharmacia) reflected in Figure 1 above.<sup>52</sup> As Figure 4 clearly reiterates, there is a two-step pattern in which there is a stock response to the briefing documents, which is entirely confined to the day upon which the briefing documents are made public, then a separate stock response to the Advisory Committee meeting and vote, which again is completely confined to the day upon which the vote occurs.<sup>53</sup> In contrast, Pharmacia's stock price movement demonstrates a very different pattern. There is *no* response to the briefing document release, a modest decline on the day of the Advisory Committee meeting, and a majority of the total stock price decline on the following day.<sup>54</sup> The pattern of the decline in Pharmacia stock price in this period indicates that a material event unrelated to the briefing documents or Advisory Committee occurred on the day *after* the February 7 Advisory Committee Celebrex review.

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<sup>52</sup> Again, the relative magnitude of the performance is unimportant; we are interested in the pattern.

<sup>53</sup> In the case of biotechnology stocks that were halted during their respective Advisory Committee meeting, the stock price response is evident on the following trading day.

<sup>54</sup> There was no possible return for Pharmacia between the posting of the briefing documents and the Advisory Committee meeting, since the documents were made public on the day immediately prior to the Advisory Committee meeting; this is indicated by the dashed red line.

**Figure 4. Performance of Pharmacia Compared to Other Stocks Declining During Advisory Committee Meetings**

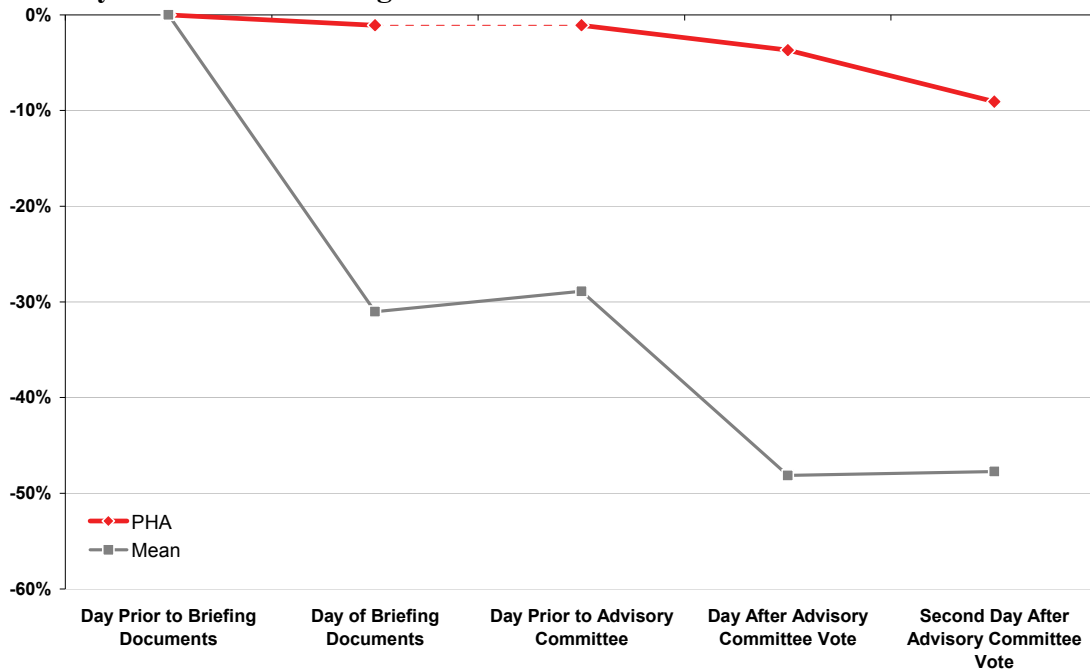


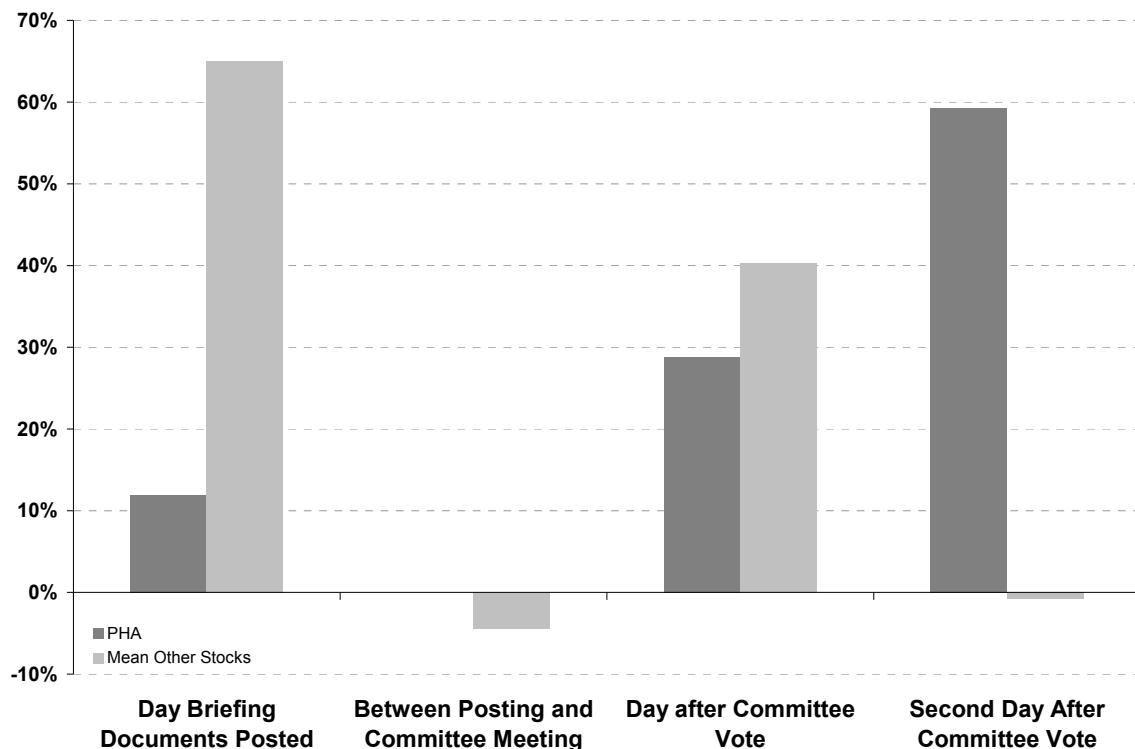
Figure 5 takes the total return, measured as a percentage of stock price movement, over a period of three or four trading days<sup>55</sup>, including (1) the return generated in response to the briefing documents, (2) the return generated on the day between the briefing documents posting and the Advisory Committee panel (in those cases in which there was an interim day), (3) the return generated in response to the Advisory Committee vote, (4) the return on the following day and attributes a percentage of the total return over that total period to each of those days (as indicated on the lower axis).<sup>56</sup> For Pharmacia, these days would correspond to February 6 (briefing documents

<sup>55</sup> The period would be four days if there was an intermediate day between the posting of the briefing documents and the Advisory Committee meeting.

<sup>56</sup> The total difference between the stock price on the day the briefing documents are posted versus the second day after the Advisory Committee vote is defined as “100%” of the stock price movement over that period. Accordingly, the percentage return earned on each day will, accordingly, sum to 100% over the period in question. For example, Pharmacia’s stock price declined a total of \$5.28 between February 6-8, 2001. 12% of that decline occurred on February 6, when the briefing documents were posted. 29% of that decline occurred on February 7, the day of the Advisory Committee. And the lion’s share of the decline, 59%, occurred on February 8, the day after the Celebrex Advisory Committee meeting.

posted), February 7 (Advisory Committee) and February 8 (day subsequent to Advisory Committee)<sup>57</sup> The difference in return profile between Pharmacia and the other stocks in which there were negative briefing documents and a negative Advisory Committee meeting is remarkable – 59% of Pharmacia’s return over the three-day period was generated the day after the Advisory Committee, whereas the typical pattern is that the entire return for this time period is generated on the combination of the day that the briefing documents are posted and the day of the Advisory Committee.

**Figure 5. Distribution of Returns Generated by Briefing Document Posting and Advisory Committee Meeting**



The observation that the majority of Pharmacia’s return occurred the day after the Advisory Committee (in contrast to the other stocks in this sample), is again,

<sup>57</sup> Pharmacia did not have an intermediary day between the posting of the briefing documents on the FDA website and the Advisory Committee meeting.

compelling empirical evidence that there was a material event affecting Pharmacia stock on February 8. This will be discussed in detail below.

**3. Intraday Reactions to the Posting of Advisory Committee Briefing Documents Demonstrates the Stock Response is Immediate**

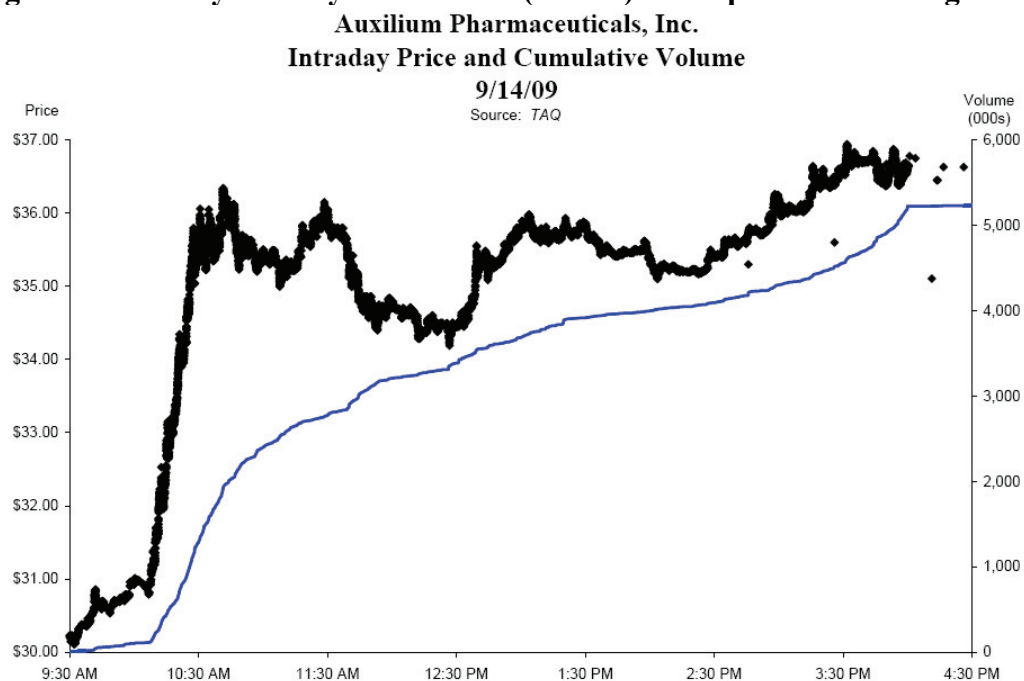
Generally, FDA Advisory Committee briefing documents are posted one to two days prior to the Advisory Committee meeting, in most cases before the market opens. In some cases, however, the documents are posted during the trading day, which provides an opportunity to examine the speed of the market reaction to the information contained in the briefing documents. Figure 6 below is a representative intraday chart.<sup>58</sup> An FDA Advisory Committee was scheduled to review Auxilium Pharmaceuticals' drug Xiaflex on September 16, 2009; at approximately 10:15 AM on September 14, 2009, the briefing documents, which contained an FDA review supportive of approval, were posted. As the chart indicates, the market reaction was immediate.

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<sup>58</sup> Additional examples can be found in Appendix B.



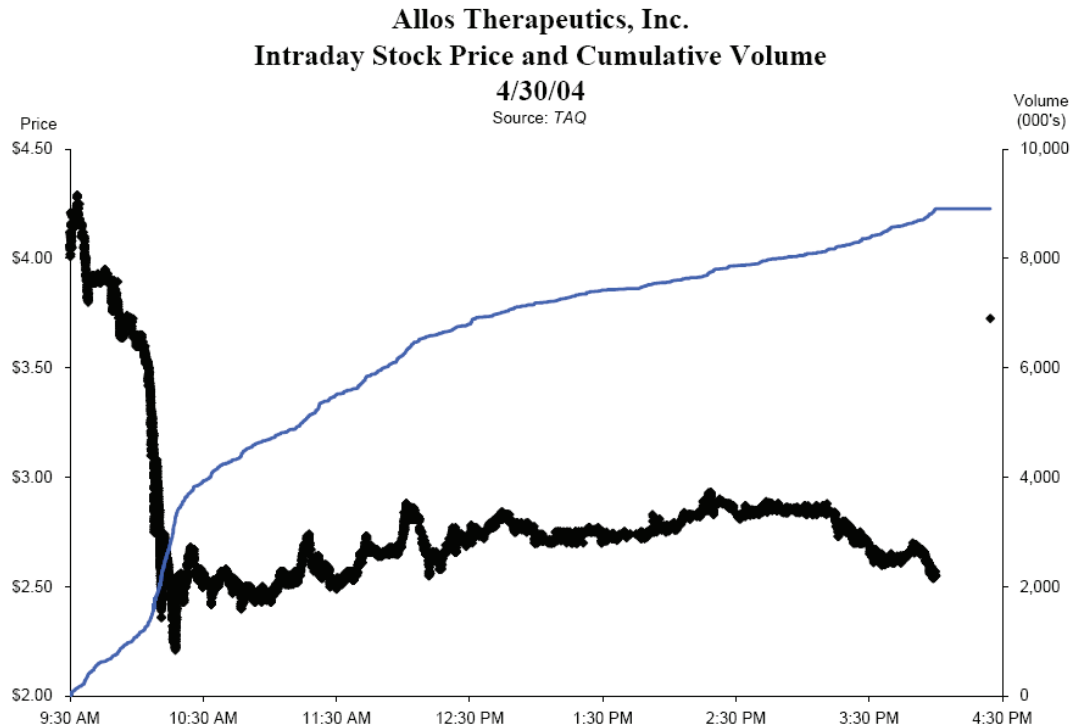
**Figure 6. Intraday Activity of Auxilium (AUXL) in Response to Briefing Documents**



Note: Thick black line represents the stock price; the blue line cumulative volume

Market responses are similar in onset and quickness when the news is negative. For example, Allos Therapeutics received a negative FDA review of its cancer compound RSR13; the briefing documents were public by about 10:00 AM on April 30, 2004. Again, the market reaction to the briefing documents was immediate (Figure 7).

**Figure 7. Intraday Activity of Allos Therapeutics (ALTH) in Response to Briefing Documents**



Note: Thick black line represents the stock price; the blue line cumulative volume

What is notable about the market response to the posting of briefing documents is the nearly instantaneous manner in which the stock price adjusts to the new information. Often within minutes to an hour, at the most, the stock price is already stabilizing. These events are veritable “poster children” for market efficiency. This rapid and efficient response is highly inconsistent with Dr. Feinstein’s concept that it takes three days for the market to “process” the “complex” and “voluminous” information contained in FDA Advisory Committee briefing documents.

#### **4. Conclusion Regarding the Three Day Theory**

Unfortunately for the Plaintiffs, their argument for loss causation, materiality and damages is untenable in light of the fact that the disclosure of the full

CLASS results on February 6, 2001 did not result in a sell-off of Pharmacia's stock. If Plaintiffs' claim that Defendants had misled the market were accurate, the February 6 disclosures ought to have cured the market of any alleged materially false impressions it held of CLASS or the odds that Celebrex would gain a label modification, and therefore cause a significant decline in Pharmacia's stock price. Though Occam's Razor would demand the most simple explanation of this observation, which is that the initially undisclosed CLASS data were immaterial, the Plaintiffs have chosen a less parsimonious interpretation, which is that the newly disclosed data in the briefing documents was indeed material – however it took not one, not two but three days for the importance and materiality of that information to be contemplated and assimilated by the market. And, says Dr. Feinstein, never mind that other material adverse developments occurred on the second and third day of this conjectured three day period, including the release of Vioxx briefing documents, an Advisory Committee vote against a Celebrex label modification and then, critically, a subsequent vote in favor of an improved label for Celebrex's key competitor, Vioxx.

Not only does Dr. Feinstein's hypothesis violate Occam's Razor, it is demonstrably inconsistent with the empirical evidence. This report presents an analysis of the typical performance of biotechnology and pharmaceutical stocks during the period of time that briefing documents are made public and Advisory Committees meet, discuss and vote. Whether the results are positive, negative or mixed; whether the Advisory Committees endorse the sentiments of the FDA reviewers or reject them, the historical track record demonstrates unequivocally that the market does not take three days to assimilate the information contained in FDA briefing documents, and that the response to briefing documents is an event distinct from the response to the subsequent Advisory

Committee meeting. The market reaction to the posting of briefing documents is immediate and rapid, and when there is a trading day between the posting of the briefing documents and the Advisory Committee meeting, the stock performance on that interim day is muted. So too for the trading on the day after the Advisory Committee, which does not reflect the volatility and direction of the Advisory Committee vote from the prior trading day. These data indicate that for both discrete events – the briefing document posting, and the Advisory Committee meeting – the market response is contained within that day’s trading. Yet Dr. Feinstein asks us to believe that in this case, it took an additional two days for the market to respond (and even more ridiculously, that the lion’s share of that response occurred within one hour of the close of trading on the third trading day, as will be shown below). Is it plausible, as would have to be the case under Dr. Feinstein’s theory, that the market suddenly realized, after “processing” for nearly three full trading days after the briefing documents were released, that the information learned was negative for Pharmacia, even though there is no other example that I can find in which this trading pattern has been observed? In my opinion it is not and all of the evidence contradicts this untenable theory.

**C. The Advisory Committee Vote on Vioxx Drove the February 8 Stock Price Decline**

I preface this section of the report by noting that Dr. Feinstein devoted a total of two sentences in his report to the consideration that Advisory Committee discussion and vote on Vioxx would have been material to Pharmacia analysts and investors. These two sentences, which are worth citing in their entirety, summarily state: “I considered whether news over this timeframe about Pfizer and about Merck’s COX-2

inhibitor Vioxx was confounding information. I determined that it was not.”<sup>59</sup> This casual dismissal stands in stark contrast to the nearly three and one-half pages of his report devoted to determining whether other Pharmacia-related news during this time could have contributed to the stock return over this period, all of which are obviously not material items on their face, in my opinion.<sup>60</sup> It is not only my expert opinion that a development potentially delivering a meaningful marketing advantage to Celebrex’s competitor would have been considered materially adverse by a Pharmacia investor, I believe this would be obvious to anyone, expert or not. Therefore, I can only conclude that either Dr. Feinstein (a) has no understanding of the dynamics of the market for COX-2 inhibitors, or so much as the simple fact that Pharmacia and Merck were in direct competition with one another, or (b) he deliberately failed to discuss this event because he knew that its materiality would be obvious and would undermine his far-fetched three day thesis. Either way, his failure to address this issue in any meaningful way leaves his report entirely unreliable and his conclusions fundamentally flawed.

At approximately 3:00 p.m. on February 8, 2001, the FDA Arthritis Advisory Committee voted to recommend incorporation of new safety data from Merck’s VIGOR trial into the Vioxx label. This event, which came on the heels of the Committee’s prior day vote not to recommend a label change for Celebrex, created a real possibility that Celebrex would now be at a meaningful competitive disadvantage. This new risk – completely unrelated to the CLASS results that had been disclosed in the Advisory Committee briefing documents on February 6 – caused a decline in Pharmacia’s stock price. The intraday chart (Figure 8) clearly demonstrates that

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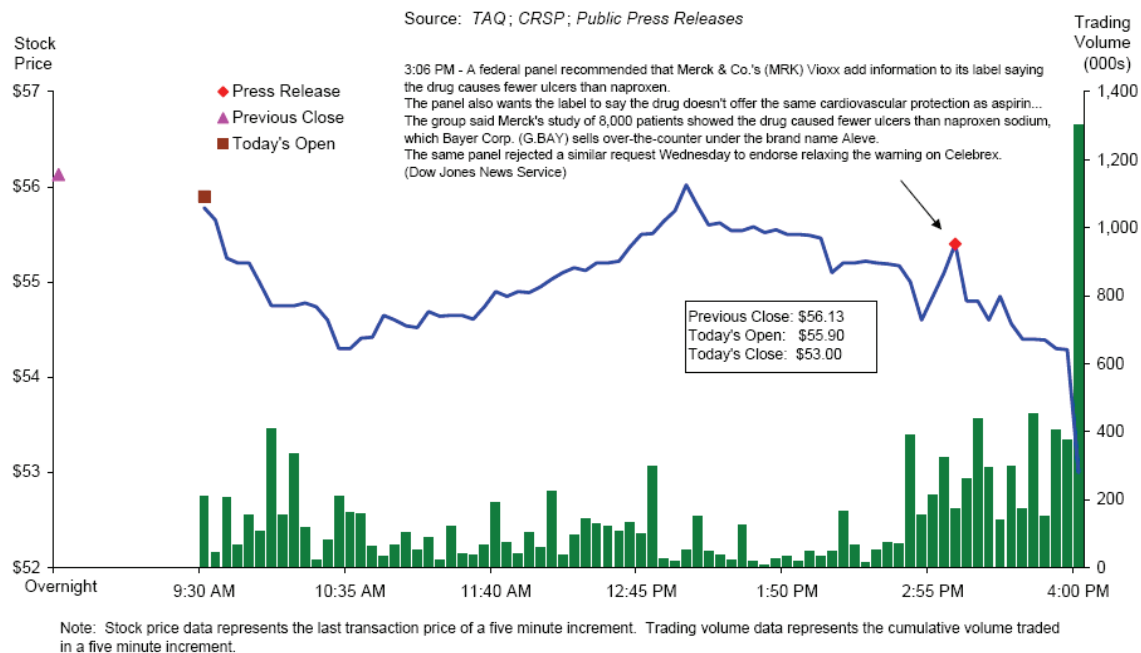
<sup>59</sup> Feinstein Report at ¶ 271.

<sup>60</sup> *Id.* at ¶¶ 256 – 271.



immediately upon the Advisory Committee's vote to recommend a label change for Vioxx, Pharmacia's stock price began to drop on a surge in the trading volume. This sharp decline on escalating volume cannot reasonably be attributed to anything other than the immediately preceding event, which was the FDA Arthritis Advisory Committee vote to recommend a Vioxx label change, which the market perceived as creating new risks for Celebrex sales growth.<sup>61</sup>

**Figure 8. Pharmacia Intraday Stock Price and Trading Volume, February 8, 2001**



In addition to the intraday trading, analyst reports make it abundantly clear that the February 8 decline in Pharmacia's share price was driven by concerns over competition with Vioxx, as opposed to the February 6 disclosure of additional CLASS data. As I discussed extensively in my initial expert report, prior to this point, analysts

<sup>61</sup> For a fuller, more detailed discussion, see my expert report dated June 7, 2011, from which these findings are summarized.

had generally believed that the FDA would consider Celebrex and Vioxx as a single class of drug and would treat both drugs similarly with respect to any label change (see the multiple analyst comments cited there). After February 8, 2001, however, for the first time many (if not most) analysts were considering the possibility that the FDA would not treat these agents as a single drug class with regard to GI safety data and that Celebrex could emerge with a label inferior to that of Vioxx:

Salomon Smith Barney, Merck note, February 8, 2001. MRK's Vioxx had a good day at the FDA. The FDA committee recommended the inclusion of gastrointestinal safety data on the Vioxx label. However, the committee also recommended that the cardiovascular risk data be added to the Vioxx label, but in a toned down way. Many investors interpreted this as a win for Vioxx in its battle vs Celebrex.<sup>62</sup>

Enskilda Securities, Pharmacia note, February 9, 2001. Amid labeling concerns over Celebrex, Pharmacia shed more than 5% yesterday . . . . While the FDA has advised on new labeling for Merck's Vioxx (key competitor for Celebrex), Celebrex's new labeling will probably not look materially different from before.<sup>63</sup>

CIBC World Markets, Pharmacia note, February 8, 2001

**Relative Victory.** We had assumed that Vioxx's (MRK) and Celebrex's (PHA) labels would be altered to include safety data, but not remove [the] GI warning, as well as risks. Vioxx has won this endorsement, handing MRK a victory . . . . **Too Late for Celebrex?** With changes to Vioxx's label, Celebrex could be disadvantaged..<sup>64</sup>

Lehman Brothers, Merck note, February 9, 2001. [W]e expect Vioxx to become the dominant COX-2 inhibitor in

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<sup>62</sup> February 8, 2001, Solomon Smith Barney, "Merck & Co., Inc," DEFEX 009956 – DEFEX 009958 at DEFEX 009956.

<sup>63</sup> February 9, 2001, Enskilda Securities, "Pharmacia Corp, Labelling [sic] concerns continue for Celebrex,' DEFEX 010131 – DEFEX 010132 at DEFEX 010131.

<sup>64</sup> February 8, 2001, CIBC World Markets, "Pharmacia Corporation," DEFEX 010013 – DEFEX 010021.

the market. Most recently, new Rx's were virtually split 50/50 in the US between Vioxx and Celebrex. We now expect a divergence, with Vioxx moving significantly ahead of Celebrex in new script share. This is based on the assumption that Vioxx, but not Celebrex, gains the aforementioned positive GI label change . . . . Pharmacia claims that it will likely receive a comparable claim with respect to Celebrex's GI safety superiority to ibuprofen. Based on Wednesday's meeting, that statement appears aggressive.<sup>65</sup>

A.G. Edwards, Pharmacia note, February 12, 2001. The Vioxx label probably will indicate a stronger GI safety profile than the Celebrex label.<sup>66</sup>

Raymond James, Pharmacia note, February 13, 2001. Celebrex could face tougher competition from Merck's Vioxx after a panel of medical experts last week concluded that Vioxx caused fewer stomach problems than an older drug, naproxen. Regulators rejected a similar claim by Pharmacia<sup>67</sup>.

Beyond these analyst reports, coverage of the Advisory Committee outcome in the popular press echoed the seeming Vioxx advantage emerging from the review. The February 9 Wall Street Journal coverage of the FDA Arthritis Advisory Committee led with the statement that "A federal advisory panel concluded that Merck & Co.'s popular arthritis drug is safer on the stomach than older painkillers, giving Merck a slight but important edge over a rival pill marketed by both Pfizer Inc. and Pharmacia

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<sup>65</sup> February 9, 2001, Lehman Bros., "Merck & Co. (MRK-\$81.85) 1 – Strong Buy," DEFEX 009141 – DEFEX 009142 at DEFEX 009142.

<sup>66</sup> February 12, 2001, A.G. Edwards & Sons, Inc., Equity Research-Pharmaceuticals, "Pharmacia Corporation (PHA: \$54.23), DEFEX 009135 – DEFEX 009140 at DEFEX 00936.

<sup>67</sup> February 13, 2001, Raymond James, "Pharmacia Corp.", located in Pharmacia Corporation Analyst Reports for the Period 10/19/00 - 2/13/01, DEFEX 005492 – DEFEX 005861 at DEFEX 005537. This is, of course, a factual error. The FDA Advisory Committees are not "regulators" and the recommendations of the Committees to the FDA cannot be viewed as decisions made by regulators.

Corp.”<sup>68</sup> *Businessweek* similarly reported that a Vioxx advantage had emerged from the FDA Arthritis Advisory Committee, with an April 19, 2001 article (“Mortal Combat for the Painkillers” by David Shook) stating “[t]he results of Merck’s latest Vioxx trials appear to be more compelling to doctors and regulators than Pharmacia’s Celebrex studies.”<sup>69</sup> *Heartwire*, a cardiologist-oriented newsletter published by theheart.org, reported on February 9, 2001 that “Vioxx® (rofecoxib - Merck) came out a qualified winner while Celebrex® (celecoxib - GD Searle division of Pharmacia Inc/Pfizer Inc) lost, in their respective bids before the FDA Arthritis Advisory Committee to have the standard NSAID warnings that appear on their labels removed.”<sup>70</sup>

I reiterate my finding that after the FDA Arthritis Advisory Committee review of the VIGOR study and subsequent positive vote for a Vioxx label change, analysts and investors seriously considered for the first time the materially negative possibility that Vioxx would have a label superior to that of Celebrex, a new, previously unexpected risk that the market rapidly assimilated, as evidenced by the sell-off of Pharmacia stock. Given that the allegedly initially undisclosed CLASS results had been completely disseminated to the market on February 6, and that there is a very clear independent reason for the February 8 Pharmacia stock price decline, any attempt to associate the release of allegedly initially undisclosed CLASS data on February 6 with the February 8 stock price decline defies logic and is indefensible.

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<sup>68</sup> February 9, 2001, Wall Street Journal, “Panel Approves Merck’s Claim For Label on Arthritis Drug.”

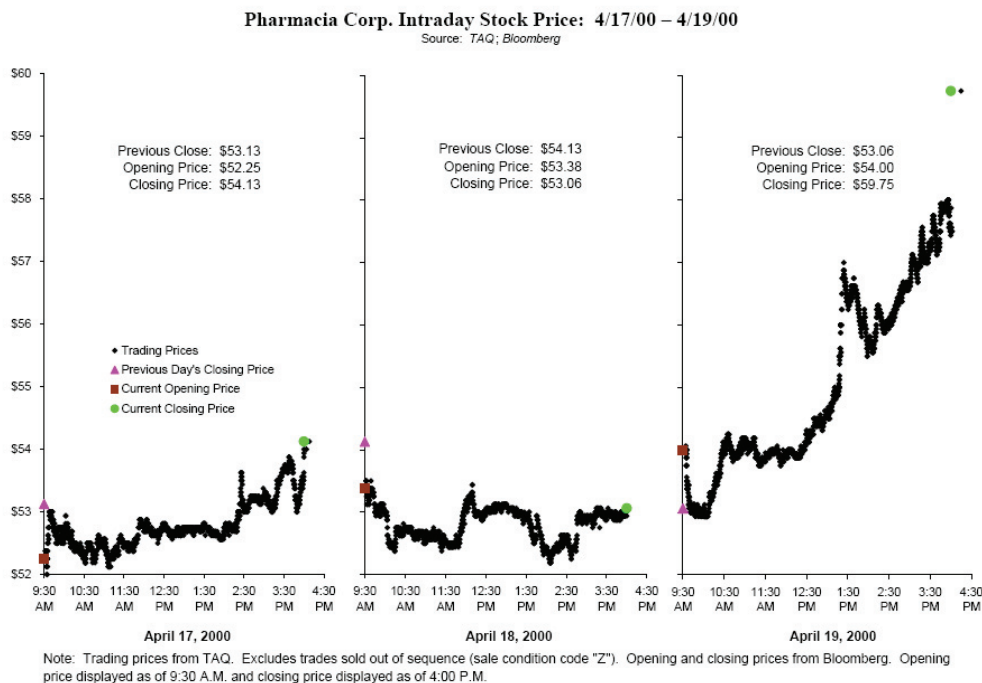
<sup>69</sup> April 19, 2001, Bloomberg Businessweek, “Mortal Combat for the Painkillers,” DEFEX 007331 – DEFEX 007333.

<sup>70</sup> February 9, 2001, *Heartwire* (www.theheart.org), “Shot through the heart: COX-2 inhibitor wars.”

#### D. Pharmacia Stock Price Reaction to Initial CLASS Disclosures

The Plaintiffs have contended that the failure to disclose certain data from the CLASS study allowed the maintenance of a falsely elevated stock price during the Class Period. They have also claimed that Pharmacia's stock price rose 12.5% from April 17 through 19, 2000 in response to the CLASS data, a perspective also shared by and cited by Dr. Feinstein in his report.<sup>71</sup> We can dismiss this claim for substantively the same reasons as those expressed in connection with the three-day information dissemination theory regarding the Advisory Committee briefing documents. My brief discussion of this issue in my expert report did not include the intraday stock price data for Pharmacia for April 17-19, 2000, which are presented in Figure 9.

**Figure 9. Pharmacia Intraday Stock Price, April 17-19, 2000**



<sup>71</sup> See Feinstein Report at ¶ 49.



It is apparent that Pharmacia's stock had no reaction to the April 15, 2000 release of the CLASS data on April 17 – though the event was well covered by Wall Street analysts. Even the announcement of the approval of Zyvox, a novel and important antibiotic, late in the morning on April 18 had no lasting impact on Pharmacia's stock. It is only in the late morning of April 19, 2000, that Pharmacia's stock price begins to move significantly upward. It is beyond reason to even imagine that this sudden stock price move, two and one-half trading days after the presentation of the CLASS data, was caused by the disclosure of the CLASS results. The stock price move is coincident with another event however – late in the morning of April 19, 2000, Bristol-Myers Squibb announced that it was withdrawing its NDA for a new hypertension drug, Vanlev. Vanlev would have been a major competitor to Pharmacia's important pipeline compound, the drug eplerenone. In my opinion, therefore, the reasonable explanation for the stock move was the Vanlev announcement and not Plaintiffs' suggestion that the market pondered the CLASS data for two and one half days and then determined the results were materially positive for Pharmacia.

**E. The Attempt to Exclude The Monsanto Agricultural Business Is Highly Questionable**

In his event study, Dr. Feinstein employs certain methodologies that render his conclusions highly unreliable. To calculate a residual return for Pharmacia over the period of February 6-8, 2001, Dr. Feinstein attempts to strip out from Pharmacia the value of its ownership stake in Monsanto (the agricultural and chemicals business), and he corrects the Pharmacia stock price changes for total stock market and pharmaceutical sector moves.

According to Dr. Feinstein, he decided to strip out the value of Monsanto in order to better gauge the effect of the alleged misrepresentations and corrective disclosures on Pharmacia's pharmaceuticals business"

Removing the value of Pharmacia's holdings in New Monsanto focused the event study analysis on the pharmaceuticals business and eliminated the potential for the unrelated business to obscure the impact of pharmaceuticals news. That is, if the value of the New Monsanto holdings were not removed, information about Celebrex, for example, might impact the valuation of the pharmaceuticals portion of Pharmacia's business, but this impact could be obscured, or muted, by the weight of the chemicals and agricultural portion of the business.<sup>72</sup>

From an *investor's* perspective, focusing on only the "pharmaceuticals business" to determine whether or not information is material makes no sense – an investor could not invest in Feinstein's hypothetical "Pharmacia Pharmaceuticals," but only in Pharmacia, which also includes Monsanto, and therefore, any investor in Pharmacia would necessarily have to consider the risks, upside and downside of Pharmacia's agricultural and chemicals business. Therefore, materiality (or lack thereof) to "Pharmacia" during the Class Period can only mean Pharmacia as a whole (*i.e.*, the pharmaceutical business *and* Monsanto's agricultural business). Put another way, what would be material to an investor in Pharmacia if it were a pure pharmaceutical business is irrelevant because that business did not exist as a publicly traded entity available for investors.

There are additional problems with Dr. Feinstein's attempt to strip out from Pharmacia the value of its Monsanto holdings in order to eliminate "the effect that

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<sup>72</sup> *Id.* at ¶ 177.

any chemicals and agricultural related news might have wielded on the value of Pharmacia stock.”<sup>73</sup>

**1. Stripping Out Monsanto Made Pharmacia Less Comparable To Other Pharmaceutical Companies**

As part of his event study, Dr. Feinstein compared movements in Pharmacia’s stock price to movements in the stock prices of other pharmaceutical companies that, like Pharmacia, were components of the Dow Jones U.S. Pharmaceutical index. Dr. Feinstein apparently believes that stripping out the Monsanto business from Pharmacia to make it a “pure” pharmaceutical company made for a more accurate comparison to the other companies in his index. In fact, stripping out Monsanto made his comparison less accurate because many of the peer companies in Dr. Feinstein’s index were also diversified healthcare companies that had *substantial non-pharmaceutical businesses*.

For example, based on full year 2000 financial results, these companies generated the following percentage of total revenue from pharmaceutical sales: 41% (Johnson and Johnson), 76% (American Home Products), 79% (Bristol-Myers Squibb), 85% (Schering-Plough) and 94% (Eli Lilly),<sup>74</sup> with the remainder of revenues generated from diverse businesses including consumer healthcare, medical devices, nutrition and animal health. With 70% of its revenues generated by pharmaceutical sales, Pharmacia is not distinct from its peer group in this respect – as was well known and understood by the

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<sup>73</sup> *Id.* at ¶176.

<sup>74</sup> See February 2001, Merrill Lynch Analyst Report, “Pharmaceuticals: U.S. Major Pharmaceutical Model and Pipeline Book: 4<sup>th</sup> Quarter 2000 Issue” and January 23, 2001 Johnson & Johnson Press Release, “Johnson & Johnson Fourth Quarter EPS Rose 16.1% on Sales Increase of 3.4% 2000 EPS Rose 15.2% on Sales Increase of 6.1,” available at <http://www.investor.jnj.com/releasedetail.cfm?releaseid=63881> (last visited July 15, 2011).

market. This severely undermines the rationale for Dr. Feinstein to attempt to compare the value of Pharmacia's pharmaceutical business only against a peer group of diversified healthcare businesses.

Moreover, unlike Dr. Feinstein, investors considered Pharmacia to be and treated it as a pharmaceutical company, notwithstanding its agricultural and chemicals business. Indeed, as discussed above, Pharmacia was a component of the Dow Jones U.S. Pharmaceutical index, which is comprised of the stocks of a variety of biopharmaceutical companies, including all large U.S. pharmaceutical companies, as well as some generics, specialty pharmaceutical and biotechnology companies. Moreover, as reflected in the multiple securities analyst reports discussed in my initial report and here, the Wall Street securities analysts who covered Pharmacia, were pharmaceutical industry analysts, not agricultural or chemicals industry analysts.

## **2. Dr. Feinstein's Valuation Of Monsanto Is Inaccurate And Unreliable**

There is a critical, untested assumption underlying Dr. Feinstein's process in stripping out the value of Monsanto, which is that the stock market valuation of Monsanto can be considered an accurate reflection of the value of the Monsanto agricultural business. Dr. Feinstein has not shown that trading in Monsanto was efficient – therefore, we have no idea whether Monsanto's stock price on any given day accurately reflected “any chemicals and agricultural related news” relevant to Monsanto's business. Moreover, and more concerning, it was well known that Pharmacia intended to jettison its remaining holdings in Monsanto as soon as it could execute such a transaction. In this circumstance, the eventual sale or distribution of the vast majority of Monsanto shares could or would have acted as a damper on Monsanto stock price performance –investors

knew that the majority of Monsanto shares would in the not-so-distant future become freely trading, creating a risk of significant excess supply of Monsanto stock, which would of course result in negative pressure on the stock price.

There are yet additional concerns with Dr. Feinstein's process. Given the size of Pharmacia's stake in Monsanto, all of Monsanto's financial statements were consolidated into Pharmacia's. It is an untested assumption that the market's view of Pharmacia's financial performance, as reflected in its stock price, can be calculated by treating the value of Monsanto's stock as if it were simply cash sitting on the Pharmacia balance sheet that could be ignored in order to calculate the value of the underlying pharmaceutical business. Unlike cash, the market had expectations for a potentially changing value of Monsanto's price, an expectation that cannot possibly be captured in Dr. Feinstein's analysis.

All of these factors, in my opinion, suggest that any process that attempts to extract a reliable value for Pharmacia's drug business are too fraught with uncertainty and untested underlying assumptions to make the process anything more than a mathematical exercise in futility. On the one hand, we have an actual daily stock price that reflects the sum of all market forces operating on the stock that day. Dr. Feinstein abandons reality for a hypothetical construct of uncertain need that replaces reality with an estimated price generated by a process that introduces unquantified and unexamined error and bias into the calculation. His choice is inscrutable to me.

Thus, in my opinion the methods used by Dr. Feinstein to calculate a statistically significant residual per share loss for Pharmacia of \$5.92 during February 6-8, 2001 are suspect and opaque because he unjustifiably substitutes potentially error-laden estimates for actual historical stock price data.



**F. Conclusion**

Dr. Feinstein, in opining for the Plaintiffs, has constructed an imaginary world in which information eagerly anticipated by the analysts and investors<sup>75</sup> takes three days to be slowly digested by the market. Dr. Feinstein's opinions are unreliable because he completely misunderstands, and therefore, fails to capture the nature of how investors and analysts approach FDA Advisory Committee meetings and their associated briefing documents. The fact that Dr. Feinstein made no attempt to validate his theory by examining the behavior of actual stocks in response to other Advisory Committee briefing document disclosures and meetings highlights the infirmity of his conclusions.

Further, Dr. Feinstein's theory that it took the market a full three trading days to incorporate the corrective disclosures lacks a logical, empirical or scientific basis and is contrary to my long experience with the market for pharmaceutical company stocks. In light of Pharmacia's intraday stock price movements in response to the disclosures at issue – both the alleged misrepresentations on April 17, 2000 and the corrective disclosures on February 6, 2001 – it becomes apparent that his already fanciful theory actually requires the market to have been asleep at the switch for two and one-half days after material news was disclosed for Pharmacia, and then suddenly driving Pharmacia's stock higher (Figure 9) or lower (Figure 8). Thus, while he claims it takes three days for the market to “process” complex data, what he really means is that the market mulls over the data for two and one-half days before reacting. There is, of course,

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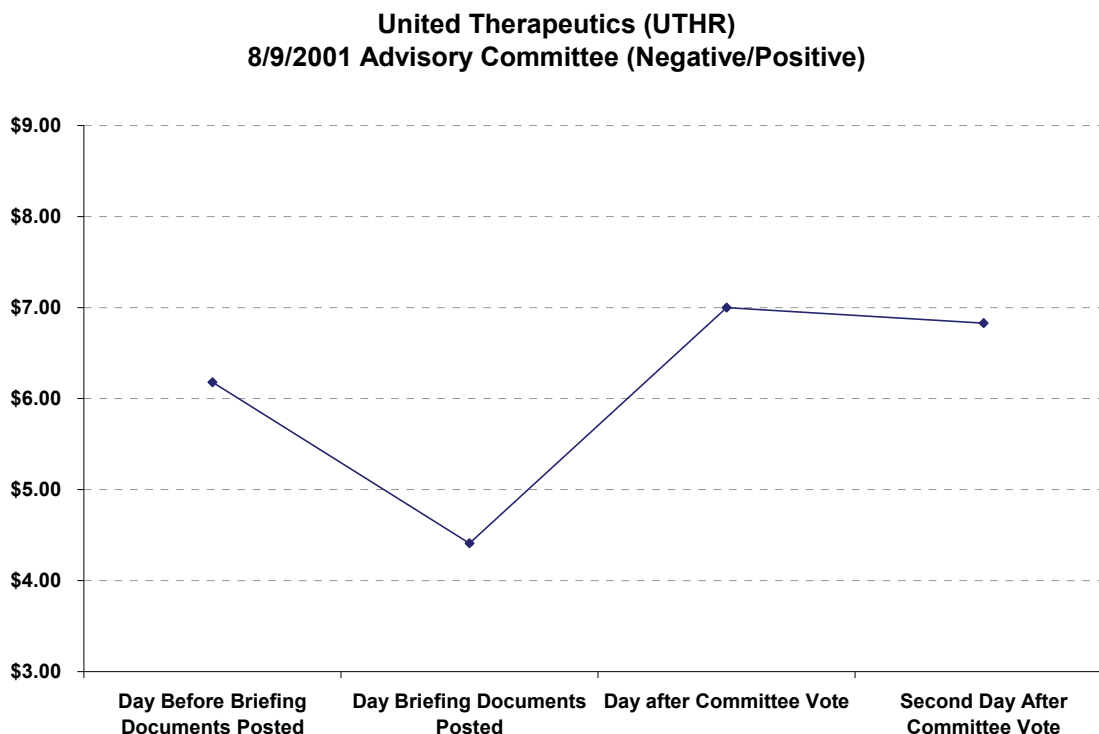
<sup>75</sup> In the case of the FDA Arthritis Advisory Committee briefing documents for the CLASS study, this consisted of a relatively modest amount of incrementally new information – indeed, five specific results of the CLASS study that Plaintiffs allege were material and intentionally withheld from the market.

no theoretical support or explanation for this manner of information dissemination and market reaction for stocks that trade efficiently.

But what I find particularly problematic about Dr. Feinstein's report is his summary dismissal of the materiality for Pharmacia of the February 8, 2001 FDA Arthritis Advisory Committee vote in favor of a label change for Vioxx, which defies common sense and ignores critical pieces of information – direct statements from analysts and the intraday trading pattern. His lack of rationale for ignoring this event is underscored by the pages he devotes to other events that are obviously immaterial. In my opinion, the only possible explanation for Dr. Feinstein's refusal to address the materiality of the February 8, 2001 Vioxx vote is that he knows it completely undermines his theory.

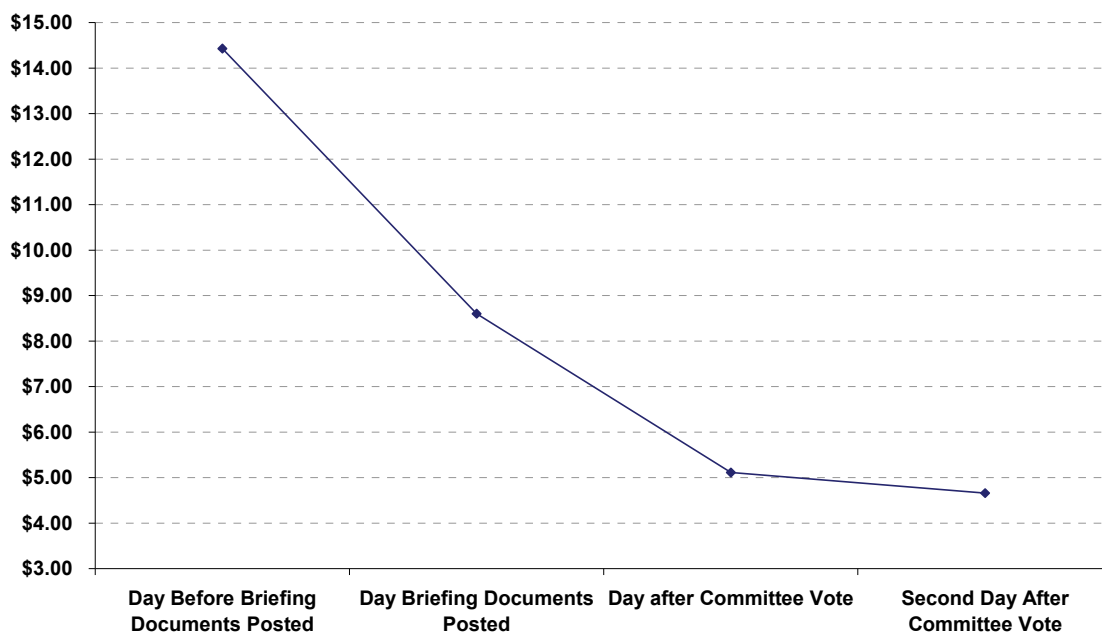
**Appendix A: Examples of Stock Price Movements in Response to**  
**Advisory Committee Briefing Documents and Meetings**

The title of each chart indicates the nature of first the briefing documents (either negative or positive) and then the Advisory Committee vote (either negative or positive).<sup>76</sup>

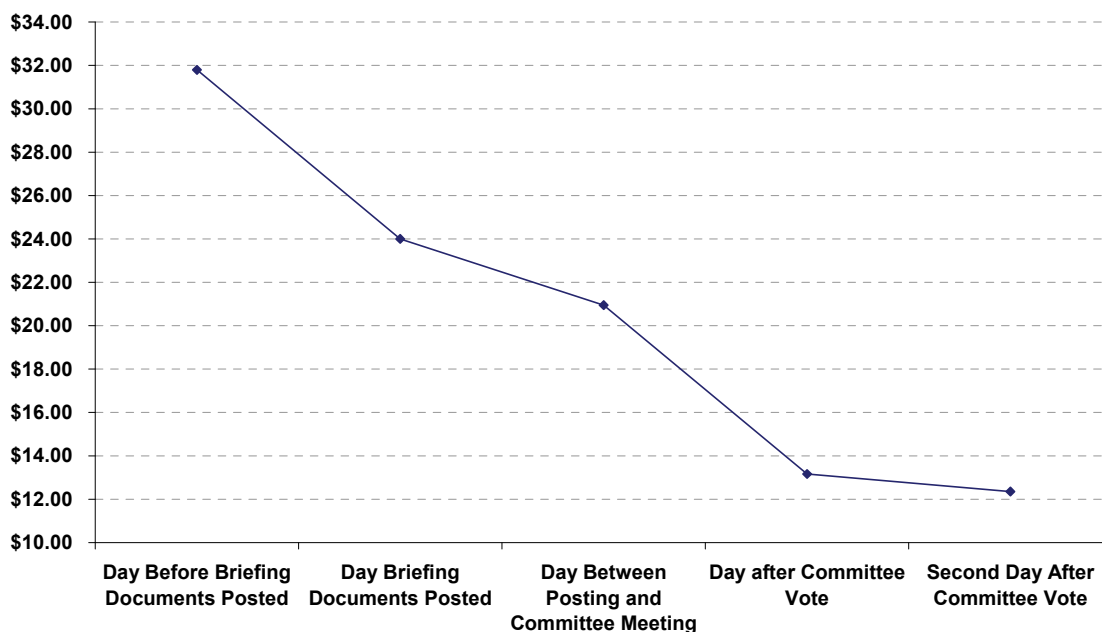


<sup>76</sup> For example, with respect to United Therapeutics chart above, “(Negative/Positive)” signifies that the briefing documents were “negative” and the Advisory Committee vote was “positive”.

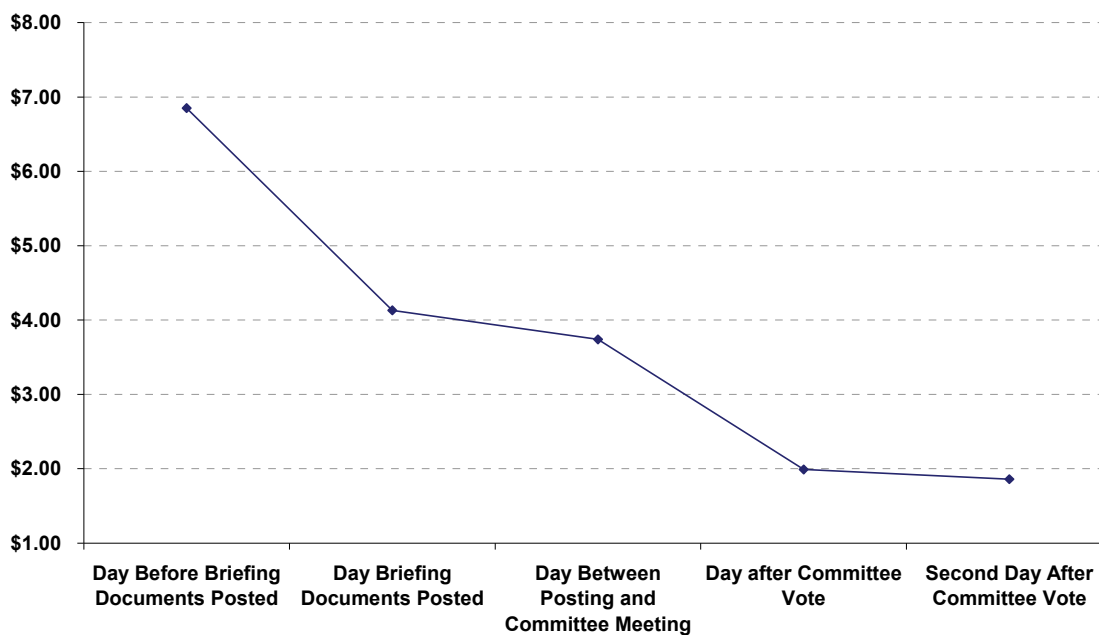
**Genta (GNTA)**  
**5/3/2004 Advisory Committee (Negative/Negative)**



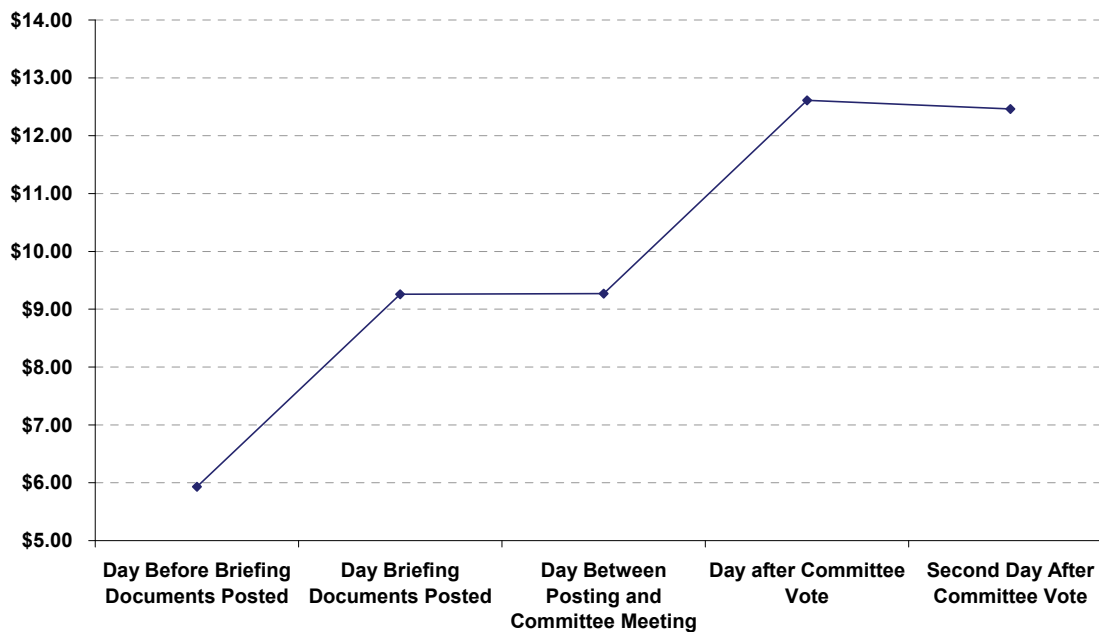
**GPC Biotherapeutics (GPCB)**  
**7/24/2007 Advisory Committee (Negative/Negative)**



**Arena Pharmaceuticals (ARNA)**  
**9/16/2010 Advisory Committee (Negative/Negative)**

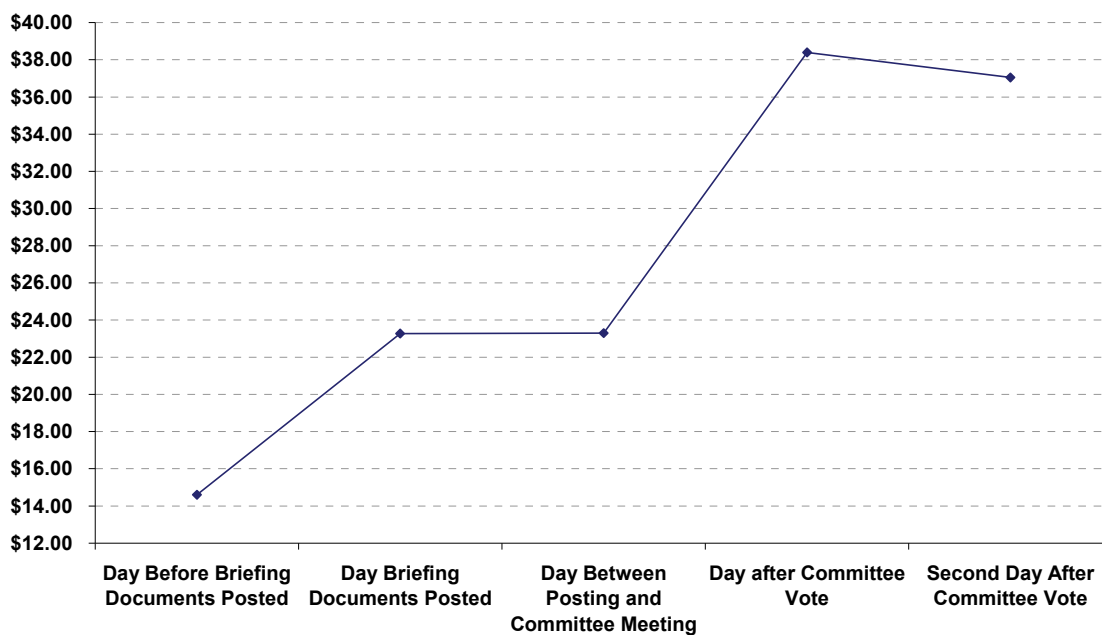


**Savient Pharmaceuticals (SVNT)**  
**June 16, 2009 (Positive/Positive)**

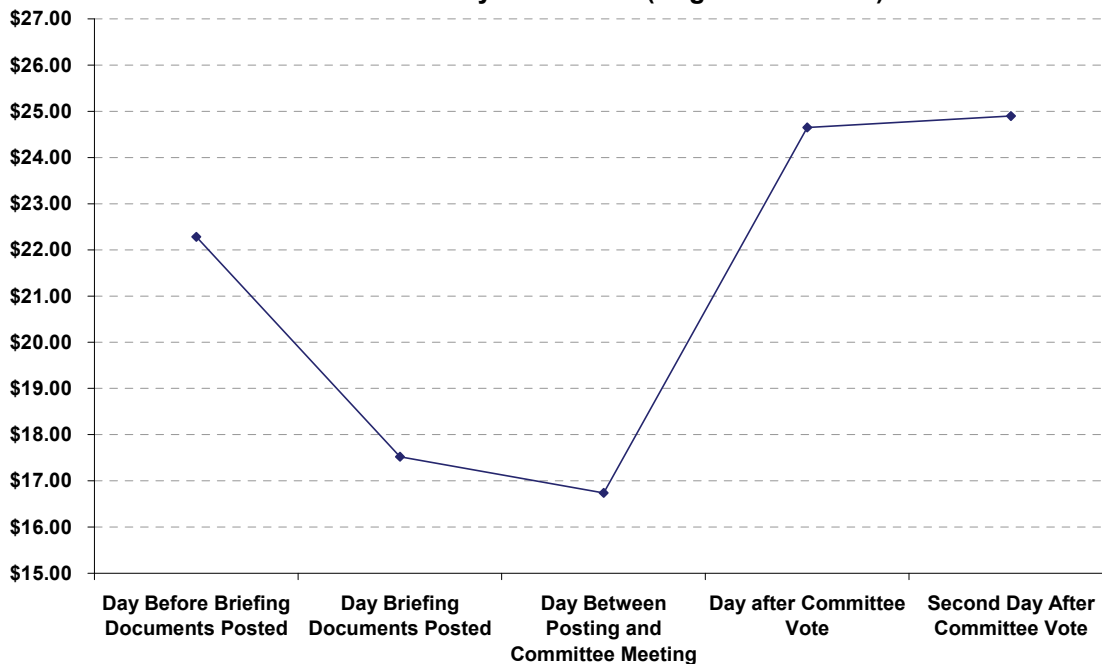




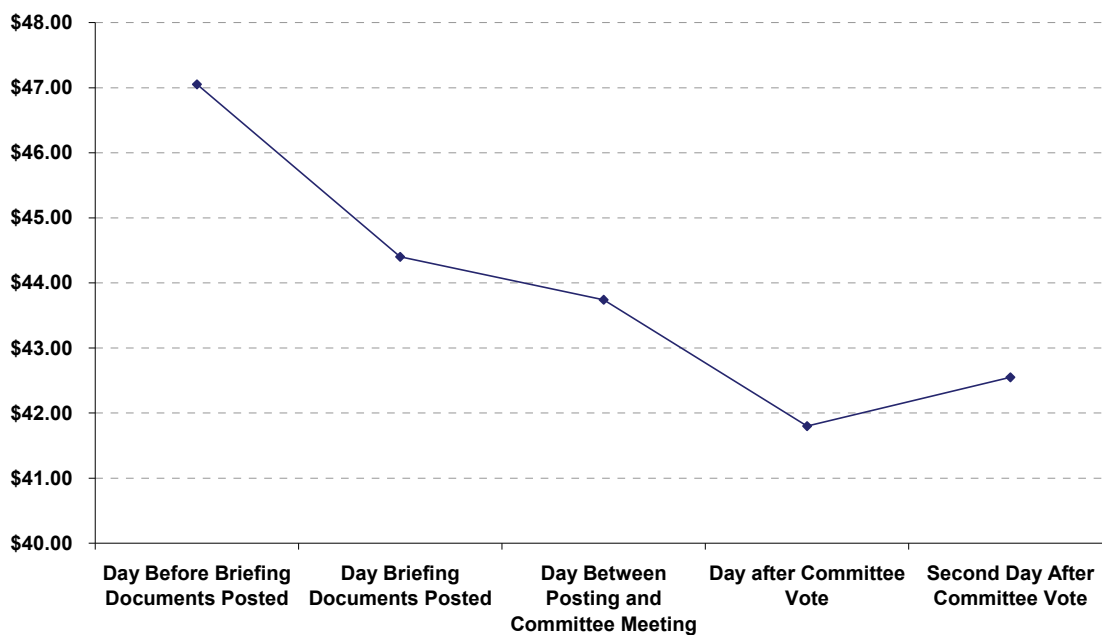
**Intermune (ITMN)**  
**3/9/2010 Advisory Committee (Positive/Positive)**



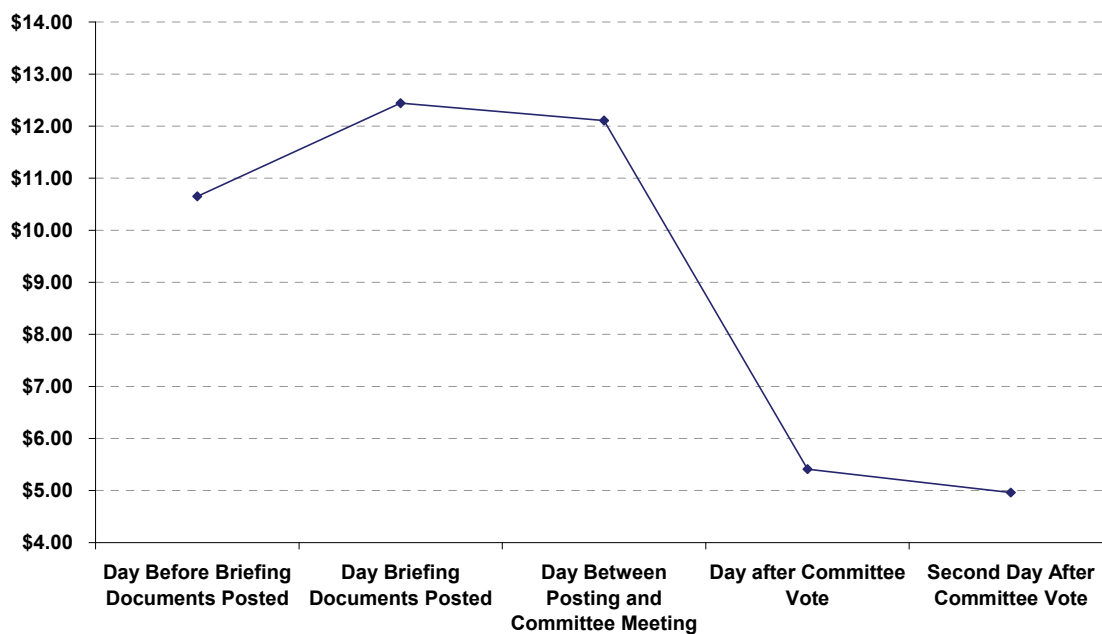
**Acorda Therapeutics (ACOR)**  
**10/14/2009 Advisory Committee (Negative/Positive)**



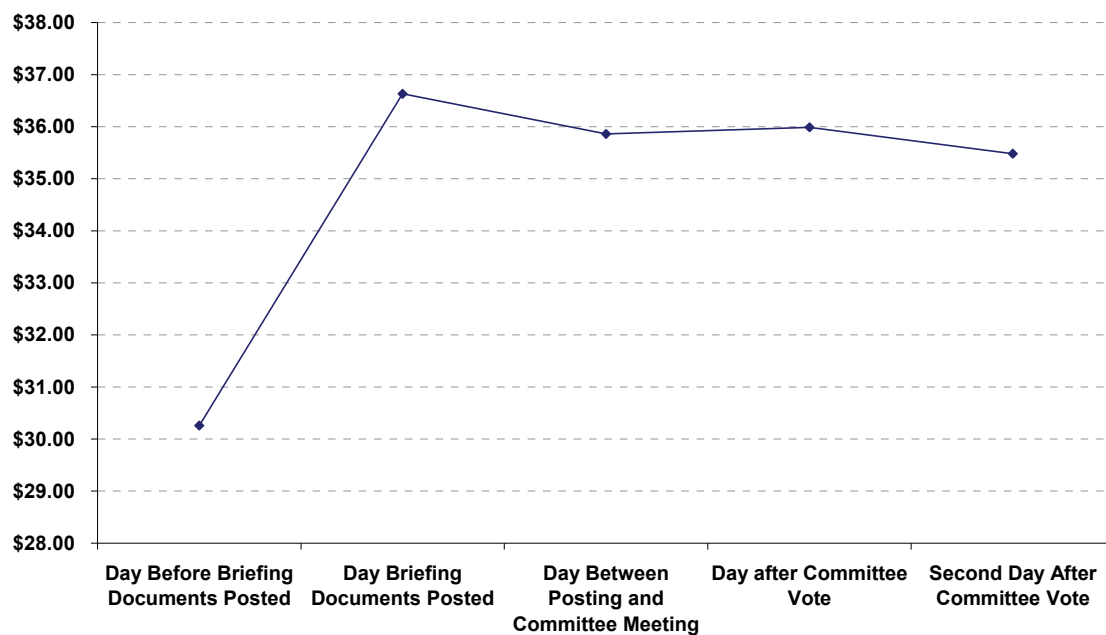
**AstraZeneca (AZN)**  
**9/10/2004 Advisory Committee (Negative/Negative)**



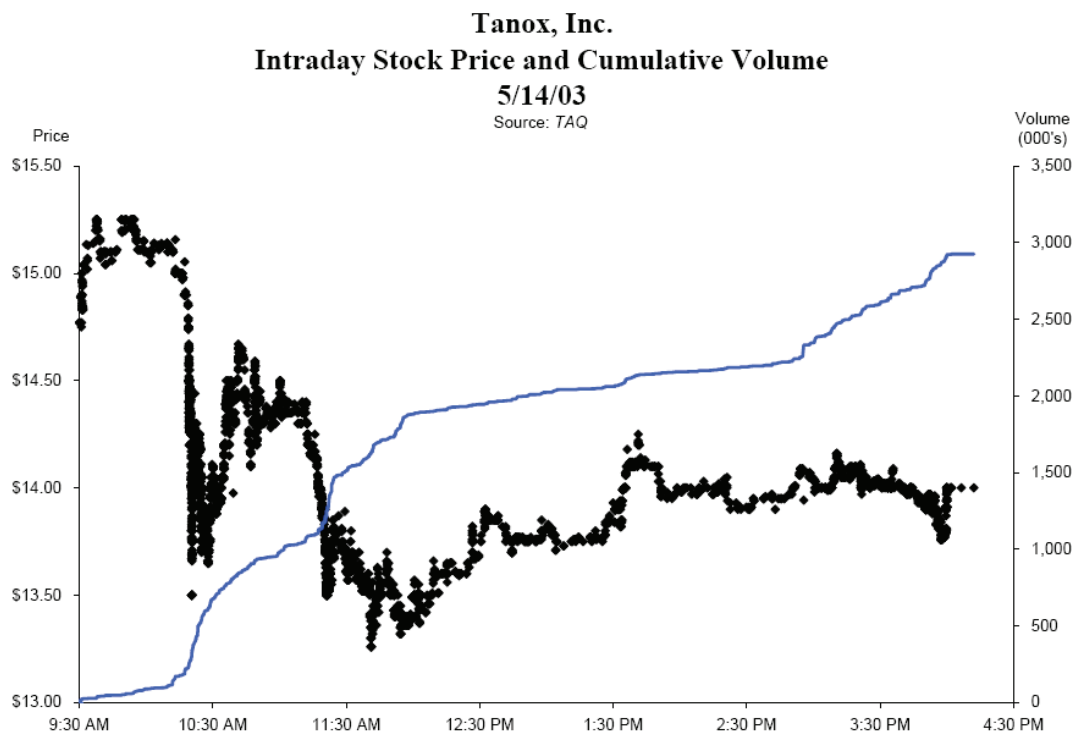
**Vivus (VVUS)**  
**10/16/2010 Advisory Committee (Positive/Negative)**



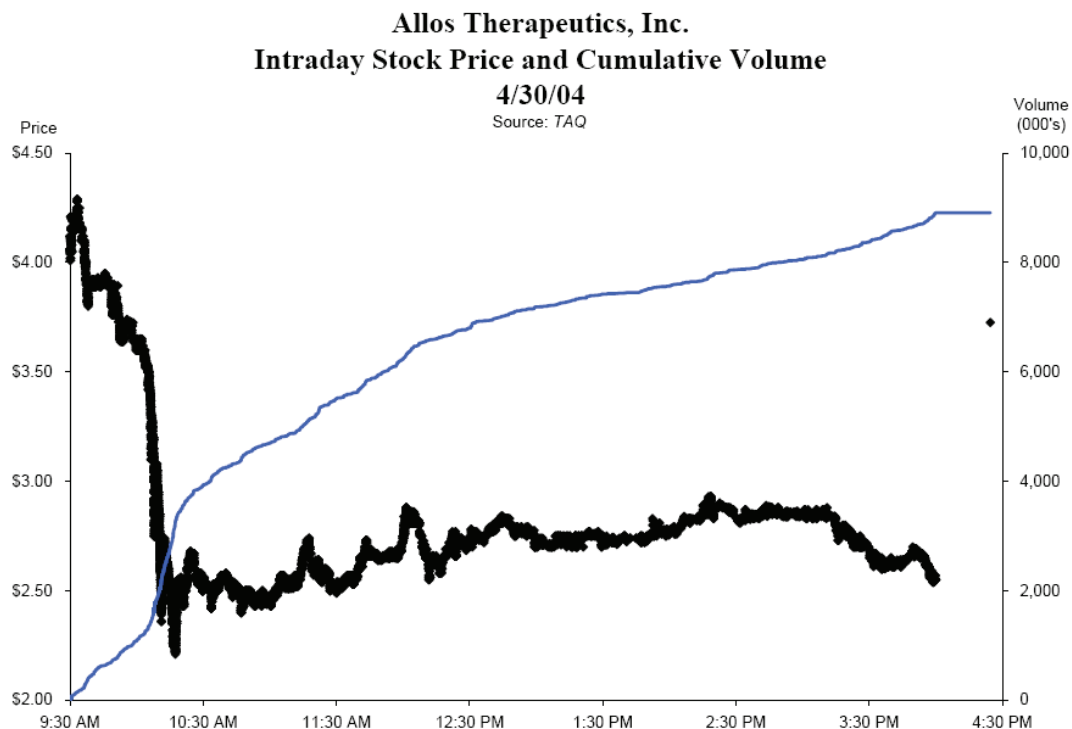
**Auxilium Pharmaceuticals (AUXL)**  
**9/16/2009 Advisory Committee (Positive/Positive)**

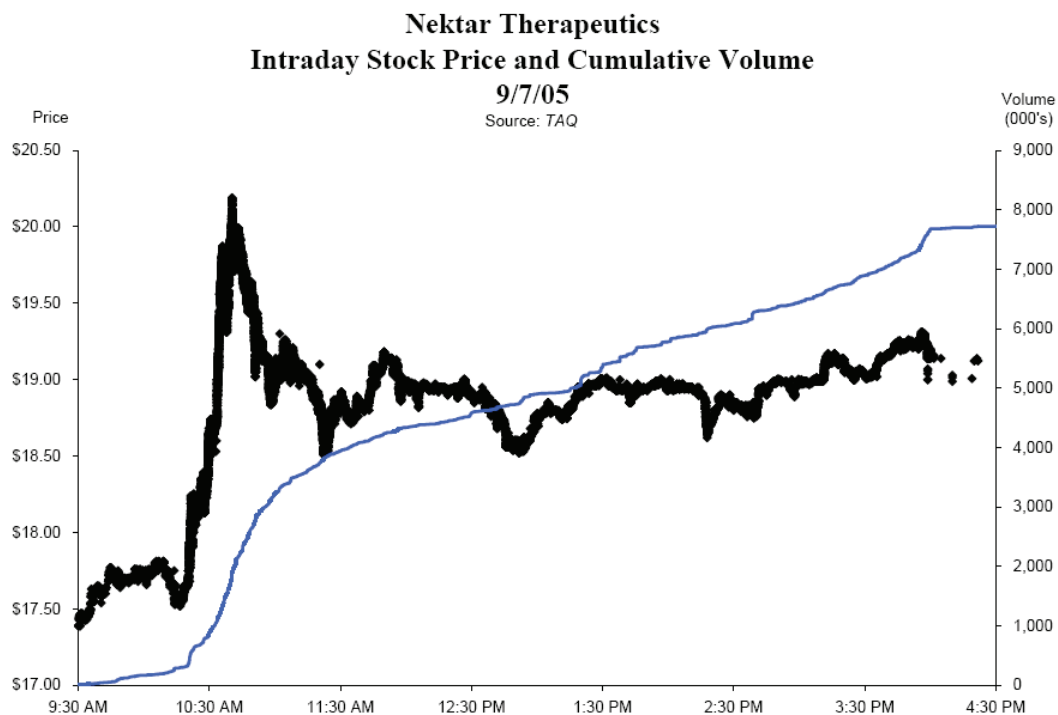


**Appendix B: Intraday Stock Reactions to Posting of Briefing Documents**



Briefing Documents Posted between 10-11 AM







### Appendix C

Listed below are the nineteen analyst notes and reports regarding Celebrex dated February 7-9, 2001 that I reviewed in connection with this expert report.

| Broker                     | Date  | Time    | Title                                                                                |
|----------------------------|-------|---------|--------------------------------------------------------------------------------------|
| JP Morgan                  | Feb 7 | AM      | FDA Review of Celebrex More Negative than Expected - Panel Could be Controversial    |
| UBS (Japan)                | Feb 7 | AM      | Yamanouchi Pharmaceutical (4503)                                                     |
| Salomon Smith Barney       | Feb 7 | 8:41 PM | FDA Reviews Celebrex & Vioxx Safety Data                                             |
| Bear Stearns               | Feb 7 | PM      | FDA Unlikely to Improve Celebrex Label                                               |
| Enskilda                   | Feb 7 | PM      | Pharmacia Corp., Celebrex sees no further labeling support from FDA                  |
| Credit Suisse First Boston | Feb 8 | 8:29 AM | No Change Recommended for Celebrex Labeling                                          |
| CIBC                       | Feb 8 | AM      | CLASS Flunks Out                                                                     |
| UBS                        | Feb 8 | AM      | Disappointing FDA Review of GI Safety Data for Celebrex                              |
| Merrill Lynch              | Feb 8 | AM      | CLASS Trial - Something Ventured, Nothing Gained                                     |
| Robertson Stephens         | Feb 8 | AM      | No GI Warning Change Recommended For Celebrex; Vioxx Up Next                         |
| CIBC                       | Feb 8 | PM      | Vioxx Prevails, Celebrex Uncertain                                                   |
| Salomon Smith Barney       | Feb 8 | 8:59 PM | Vioxx & Celebrex at FDA (Day 2)                                                      |
| Lehman Brothers            | Feb 9 | n/a     | How Do You Spell Relief? "VIOXX"                                                     |
| UBS                        | Feb 9 | n/a     | FDA Review of Vioxx: GI Safety (+), Cardiac Risk (-), Net Result Neutral             |
| Enskilda                   | Feb 9 | n/a     | Pharmacia Corp., Results Preview With Consensus                                      |
| Merrill Lynch              | Feb 9 | n/a     | U.S. Major Pharmaceuticals: Scenario Analysis Favors PHA's Celebrex Over MRK's Vioxx |
| Robertson Stephens         | Feb 9 | n/a     | FDA Arthritis Panel: Modest Label Change Suggested For Vioxx; No Change To Estimates |
| Credit Suisse First Boston | Feb 9 | n/a     | FDA Gives Ground on Improving Vioxx GI Label                                         |
| Sanford Bernstein          | Feb 9 | n/a     | VIOXX v. Celebrex: Distinction Without A Difference; Bet on Valdecixib               |

Note: Where indicated explicitly on the analyst note, the time is provided; in some cases, the note content can identify the time of publication (e.g., a February 8, 2001 note that states “this morning, the Advisory Committee will discuss Vioxx” is consistent only with publication on the morning of February 8.) “PHA” = Pharmacia, “PFE” = Pfizer, “MRK” = Merck.

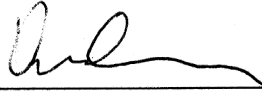
**Exhibit 1**

**ADDITIONAL FACTS AND DATA**  
**CONSIDERED BY DR. ANTHONY FIORINO**

|                                 |                                                                                                                                                                                                                                                                                            |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| P. Ex. 124 (DEFS 00125685 – 86) |                                                                                                                                                                                                                                                                                            |
|                                 | Center for Drug Evaluation and Research, Application Number: 20-505/S-002, 20-884/S-010, Statistical Review (Topamax)                                                                                                                                                                      |
|                                 | Center for Drug Evaluation and Research, Application Number: 20-505/S-002, 20-884/S-010, Medical Review (Topamax)                                                                                                                                                                          |
|                                 | February 7, 2001, UBS Warburg, Yamanouchi Pharmaceutical (4503)                                                                                                                                                                                                                            |
|                                 | February 8, 2001, UBS Warburg, Pharmaceuticals: Disappointing FDA Review of GI Safety Data for Celebrex                                                                                                                                                                                    |
|                                 | February 8, 2001, Raymond James Equity Research, “Piper: Schering-Plough, Eli Lilly Get Improved Ratings”                                                                                                                                                                                  |
|                                 | February 8, 2001, Robertson Stephens, “Pfizer Inc: No GI Warning Change Recommended For Celebrex; Vioxx Up Next”                                                                                                                                                                           |
|                                 | February 8, 2001, Salomon Smith Barney, “MRK: Vioxx & Celebrex at FDA (Day 2)”                                                                                                                                                                                                             |
|                                 | February 8, 2001, CIBC World Markets, “Merck & Co.: Vioxx Prevails, Celebrex Uncertain”                                                                                                                                                                                                    |
|                                 | February 28, 2001, Credit Suisse First Boston, Health Care Daily Rounds                                                                                                                                                                                                                    |
|                                 | February 9, 2001, UBS Warburg, “FDA Review of Vioxx: GI Safety (+), Cardiac Risk (-), Net Result Neutral”                                                                                                                                                                                  |
|                                 | February 8, 2001, Credit Suisse First Boston, “PHA: No Change Recommended for Celebrex Labeling – Pt 1”                                                                                                                                                                                    |
|                                 | February 8, 2001, Credit Suisse First Boston, “PHA: No Change Recommended for Celebrex Labeling – Pt 2”                                                                                                                                                                                    |
|                                 | February 9, 2001, Bernstein Research Call, “Vioxx v. Celebrex Distinction without a Difference; Bet on Valdecobix”                                                                                                                                                                         |
|                                 | February 9, 2001 Credit Suisse First Boston, “MRK: FDA Gives Ground on Improving Vioxx GI Label”                                                                                                                                                                                           |
|                                 | February 9, 2001, Robertson Stephens, “Merck & Co., Inc.: FDA Arthritis Panel: Modest Label Change Suggested for Vioxx; No Change To Estimates”                                                                                                                                            |
|                                 | Guidance for Industry: Advisory Committee Meetings—Preparation and Public Availability of Information Given to Advisory Committee Members, August 2008                                                                                                                                     |
|                                 | Guidance for Industry: Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000, December 1999 |
|                                 | Public Citizen Health Research Group v. FDA, No. Civ. A 99-0177(JR), 2000 WL 34262802 (D.D.C. Jan 19, 2000)                                                                                                                                                                                |

|  |                                              |
|--|----------------------------------------------|
|  | Deposition Transcript of Leland Loose        |
|  | Deposition Transcript of Kenneth Verburg     |
|  | Deposition Transcript of Samuel Zwillich     |
|  | Deposition Transcript of Catherine DeAngelis |
|  | Deposition Transcript of G. Steven Geis      |
|  | Deposition Transcript of Fred Silverstein    |

Dated: July 15, 2011

A handwritten signature in black ink, appearing to read 'A. Fiorino', is written above a horizontal line.

Dr. Anthony Fiorino